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UNITED STATES
DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

CIRCULARS AND REGULATIONS OF THE GENERAL LAND OFFICE

WITH REFERENCE TABLES AND INDEX

COMPILED BY
C. G. FISHER OF THE GENERAL LAND OFFICE

JANUARY, 1930

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UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1930

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GENERAL STATEMENT

This publication is a compilation of the circulars and regulations of the General Land Office which are of the greatest importance at the present time. The regulations necessarily must be considered as of the dates under which they were issued, and must be construed in the light of subsequent regulations, decisions, and practice. Regulations which have been amended by subsequent regulations have been noted to show that fact and regulations published in the land decisions have been noted to show the volume and page where they appear.

The regulations have been grouped under appropriate classifications, arranged in alphabetical order, and listed and indexed, as shown in the table of contents on pages III and IV.

To avoid duplication, regulations which have been entirely superseded by later regulations, or which have been entirely or in substance incorporated as parts of later instructions, have been omitted from this publication. In some cases regulations under which rights can not be acquired at the present time are carried for reference purposes in connection with pending applications which were presented at a time when the regulations were effective. Circulars not containing present governing instructions or not of present general value for reference purposes are not included herein.

Acts of Congress and forms have not been reproduced except where they were made essential parts of the original regulations. Where they were carried as parts of the original regulations but have been omitted in this publication, that fact is shown by the words "Acts omitted," or "Forms omitted," or similar notation, immediately following the particular regulations.

FIELD OFFICES OF THE GENERAL LAND OFFICE, DEPARTMENT OF THE INTERIOR

DISTRICT LAND OFFICES

Alaska.—Anchorage,[1] Fairbanks,[1] Nome.[1]
Arizona.—Phoenix.[1]
Arkansas.—Little Rock.[1]
California.—Los Angeles,[1] Sacramento.[1]
Colorado.—Denver,[1] Pueblo.[1]
Florida.—Gainesville.[1]
Idaho.—Blackfoot, Coeur d'Alene.[1]
Minnesota.—Cass Lake.
Montana.—Billings,[1] Great Falls.[1]
Nebraska.—Alliance.[1]
Nevada.—Carson City.[1]
New Mexico.—Las Cruces,[1] Santa Fe.[1]
North Dakota.—Bismarck.[1]
Oregon.—Lakeview, Roseburg,[1] The Dalles.[1]
South Dakota.—Pierre.[1]
Utah.—Salt Lake City.[1]
Washington.—Spokane.[1]
Wyoming.—Buffalo,[1] Cheyenne,[1] Evanston.[1]

NOTE.—Entry and other related business for the States not listed above in which there are public lands is transacted through the General Land Office.

OFFICE OF SUPERVISOR OF SURVEYS

Denver, Colo.[1]

PULIC SURVEY OFFICES

Alaska.—Juneau.
Arizona and California.—Phoenix;[1] San Francisco, Traders Building, 417 Market Street.
Colorado, Nebraska, South Dakota, and Wyoming.—Denver,[1] Cheyenne.[1]
Idaho and Washington.—Boise,[1] Olympia.[1]
Montana.—Helena.[1]
Nevada and Utah.—Reno,[1] Salt Lake City.[1]
New Mexico.—Santa Fe.[1]
Oregon.—Portland, Post Office Building.[1]

NOTE.—The survey and resurvey of the remaining public lands in all States not listed above are grouped in the eastern surveying district, the administrative work being directed from the General Land Office.

OFFICES OF CHIEFS OF FIELD DIVISIONS

Alaska.—Anchorage, Alaska.[1]
Arizona (except part north of Grand Canyon) and New Mexico.—Santa Fe, N. Mex.[1]
Arizona (north of Grand Canyon), Idaho (Blackfoot land district) and Utah.—Salt Lake City, Utah.[1]
California and Nevada.—Customhouse Building, San Francisco, Calif.[1]
Colorado, Kansas, Nebraska, Oklahoma, and Wyoming.—Post Office Building, Denver, Colo.[1]
Idaho (Coeur d'Alene land district), Oregon, and Washington.—Post Office Building, Portland, Oreg.[1]
Montana, North Dakota, and South Dakota.—Helena, Mont.[1]

NOTE.—The administrative work for States not listed above, in which there are public lands, is directed from the office of the Chief of Field Service, Washington, D. C.

OFFICE OF CHIPPEWA LOGGING SERVICE

Cass Lake, Minn.

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[1] Located in Federal buildings.

ABANDONED MILITARY RESERVATIONS [1]

[Reported, 20 L. D. 303]

ABANDONED MILITARY RESERVATIONS—PAYMENTS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, April 9, 1895.

Secretary Smith to the Commissioner of the General Land Office:

I am in receipt of your letter of the 25th ultimo transmitting for my approval instructions to the proper local officers for the disposal of the lands in the Fort Rice, N. Dak., and Fort Bridger, Wyo., abandoned military reservations.

You call my attention to the variance in departmental letters of February 9, 1895, and February 18, 1895, directing how the payments shall be made for the lands in these reservations respectively and the interest to be charged entrymen on deferred payments.

The act of August 23, 1894 (28 Stat. 491), authorizes entries for these lands. So much of said act as is applicable to the question presented by you is found in the proviso to the first section thereof, which is as follows:

> That persons who enter under the homestead law shall pay for such lands not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior.

For obvious reasons, the time for the payments in installments authorized by said act, and the interest thereon, should be uniform for the lands in all reservations opened to settlement by virtue thereof.

I have to direct therefore that you prepare all instructions to local officers under said act so as to conform to departmental letter of February 18, 1895, as follows:

> That the homsteader be given the option in making payment upon his entry of these lands, of making his payments in five equal payments to date from the time of the acceptance of his proof tendered on his entry, and that the rate of interest upon deferred payments be charged at the rate of 4 per cent per anum.

It follows that the instructions to the local officers, at Bismarck, N. Dak., must be amended to conform to the above directions; and the same are returned for that purpose.

The instructions to the local officers at Evanston, Wyo., are herewith returned approved.

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[1] There have been printed under this title the regulations of the greatest importance at the present time relating to lands in abandoned military reservations.

CIRCULAR NO. 677

OPENING OF ABANDONED DATE CREEK MILITARY RESERVATION, ARIZ., UNDER ACT OF AUGUST 23, 1894

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, *March 27, 1920.*

REGISTER AND RECEIVER,
United States Land Office, Phoenix, Ariz.

SIRS: Date Creek Military Reservation in T. 10 N., R. 7 W.; T. 11 N., R. 6 W.; and T. 11 N., R. 7 W., G and S. R. M., was abandoned and was relinquished and turned over to the Department of the Interior December 7, 1874, under the act of June 22, 1874 (18 Stat. 201). The resurvey of said reservation was approved August 9, 1918, and an appraisement of the lands therein has been approved. A copy of the appraisement schedule is hereto attached for your use and files.

The total area of the reservation is 6,370.83 acres, of which 840 acres have been heretofore patented and 1,082.09 acres are within "school" sections 2, 32, and 36, for which the State has not taken indemnity. The question of the right of the State of Arizona, to the unappropriated lands in said sections 2, 32, and 36, will be governed by departmental decision of January 19, 1900 (29 L. D. 418), and in the absence of valid settlement rights, the State's rights under its land grant will be recognized.

The area of the reservation being more than 5,000 acres, the agricultural lands therein will be disposed of under the provisions of the act of August 23, 1894 (28 Stat. 491). The lands being restored which are not State lands or appropriated by valid settlement established prior to approval hereof, will be subject to a preference right of homestead entry for 60 days prior to June 12, 1920, by—

> officers, soldiers, sailors or marines who have served in the Army or Navy of the United States in the war with Germany and been honorably discharged therefrom or placed in the Regular Army or Naval Reserve * * * *Provided,* That the rights and benefits conferred by this act shall not extend to any person who, having been drafted for service under the provisions of the selective service act, shall have refused to render such service or to wear the uniform of such service of the United States,

under the provisions of House Joint Resolution No. 20, approved February 14, 1920.

You will not allow any homestead application for lands hereby restored prior to June 12, 1920, except those of bona fide settlers prior to approval hereof who will be required to accompany their applications by affidavits showing the date of settlement and the kind and value of the improvements; or those filed under the provisions of the said joint resolution which applicants will be required to accompany their applications by an affidavit showing that the tracts applied for are not occupied by a bona fide settler entitled to a preference right of entry, and also proof of such military or naval service as well as a statement, under oath, that the applicant did not refuse "to render such service or to wear the uniform of such service of the United States." On June 12, 1920, the unappropriated lands hereby restored will be subject to settlement and entry as in said act of August 23, 1894, provided, by any one possessing the requisite qualifications.

Homestead entrymen will be required to make payment for the lands entered, at the appraised price, which may be cash in full at the date of the acceptance of proof upon their entries, or, at the option of the entryman, payment may be made in five equal installments, the first payment to be made one year after the acceptance of his final proof and the subsequent payments to be made annually thereafter, with interest at the rate of 4 per cent per annum, from date of acceptance of such proof. They will be allowed, however, to pay one or more even installments at any time, with interest to date of such payment. If commutation proof is submitted, payment must be made in full at time of acceptance of proof, when a certificate of entry may be issued. Upon acceptance of 3-year proof, a final certificate may be issued only in case full payment is made; otherwise, the certificate will not be issued until the final payment has been made.

Publicity will be given this restoration by giving a copy of these regulations to newspapers for publication, if desired, as an item of news, without incurring expense to the Government. You will also post a copy in your office for a period of at least 60 days prior to June 12, 1920, and will transmit a copy to the postmaster nearest the land for posting in his office. Also transmit a copy to the State land commission.

Very respectfully,
Clay Tallman, *Commissioner.*

Approved March 27, 1920.

Alexander T. Vogelsang,
First Assistant Secretary.

(Appraisement schedule omitted.)

OPENING OF LANDS IN THE ABANDONED FORT ASSINNIBOINE MILITARY RESERVATION, MONTANA

By the President of the United States

A PROCLAMATION

I, Woodrow Wilson, President of the United States of America, by virtue of the power and authority vested in me by the act of Congress approved February 11, 1915 (38 Stat. 807), do hereby prescribe, proclaim, and make known that all the unreserved lands in the abandoned Fort Assinniboine Military Reservation, in the State of Montana, which have been surveyed and classified under said act of Congress into agricultural lands and coal lands (no timber lands or mineral lands having been found therein), shall be opened to settlement and entry under the homestead laws of the United States, but not to entry or location under sections 2306 and 2307, United States Revised Statutes, and be settled upon, occupied, and entered in the following manner, and not otherwise:

1. *Units.*—To prevent confusion and more readily to dispose of conflicts during the period of simultaneous applications mentioned in paragraph No. 2, the lands, both agricultural and coal, shall, so far as practicable, be arranged in units of approximately 160 acres each, and during said period all applications for these lands shall be filed for a unit or part of a unit, as thus arranged. An application filed during said period for lands embraced in more than one unit shall be rejected.

2. *Simultaneous applications.*—All persons qualified to make a homestead entry for said lands may file one application for a unit or part of a unit, at the district land office at Havre, Mont., between 9 o'clock a. m., standard time, Wednesday, October 25, 1916, and 12 o'clock noon, on Wednesday, November 15, 1916. All applications filed during said period will be treated as filed simultaneously. Any person having only an additional homestead right for less than 160 acres may file an application for such portion of a unit as he may be entitled to enter, the land to be described according to legal subdivisions.

3. *Disposition of applications.*—The register of said land office will note on all applications received at or prior to 12 o'clock noon, on November 15, 1916, the date and hour of receipt and whether the land applied for is subject to disposition, according to the land-office records. There shall also be appropriately indicated on a map of the reservation posted for public inspection the tracts for which applications have been filed. Where there is no conflict, such applications, if in proper form and accompanied by the required payments, will be allowed immediately after the close of the period mentioned in paragraph 2. Where there are such conflicting applications, conflicting in whole or in part, the right of the several applicants will be determined by a public drawing, at the United States land office at Havre, Mont., beginning at 10 o'clock a. m., standard time, on Saturday, November 18, 1916, or as soon thereafter as practicable. The names of the conflicting applicants will be written on cards and each of these cards shall be placed in an envelope upon which there is no distinctive or identifying mark. These envelopes shall be thoroughly and impartially mixed, and then drawn, one at a time, by some disinterested person. As the envelopes are drawn, the cards shall be numbered, beginning with No. 1, and fastened to the applications of the respective persons, which shall be the order in which the applications shall be acted upon. If an applicant fails to secure any of the land applied for, his application shall be rejected. If he obtains part but not all of the land applied for, he shall be allowed 30 days from receipt of notice within which to notify the register and receiver whether to allow his application for the part obtained or to reject it in its entirety. If he does not notify the register and receiver within the time allowed, the application will be rejected.

4. *Subsequent applications.*—After the period mentioned in paragraph 2 has expired, applicants may disregard said units in making their applications, and the applications will be disposed of by the register and receiver in the usual way in the order in which they are filed in the district land office.

5. *Execution and presentation of applications.*—Applications to enter may be executed before the register or the receiver of the United States land office for the district in which the land is situated, or before a United States commissioner, or a judge or a clerk of a court of record residing in the county in which the land is situated, or before any such officer who resides outside the county and in the land district and is nearest and most accessible to the land. All applications must be presented, with the required payment, to the register and receiver in person, by mail, or otherwise.

6. *Payments.*—Each person presenting an application to enter must accompany such application with the required first payment and the land-office fee and commissions. The payment must be made

in cash, by a certified check on a national or state bank or trust company which can be cashed without cost to the Government, or by a post-office money order, made payable to the receiver of the land office. No other form of payment will be accepted. If an application is rejected, the money paid will be returned. If an application is allowed in part, the money paid in excess of the required amount will be returned.

7. *Price of land.*—For lands entered during the first six months subsequent to the date of opening, entrymen shall, in addition to the regular land-office fees and commissions, pay the sum of $2.50 per acre for said land, 50 cents per acre at the time of making entry and 50 cents per acre each and every year thereafter until the full sum of $2.50 per acre, shall have been paid. For lands entered subsequent to said period of six months, the entryman will be required to pay $1.25 per acre for the land, in addition to the regular fee and commissions, 25 cents per acre at the time of making entry and 25 cents per acre each and every year thereafter until the full sum of $1.25 shall have been paid.

8. *Fee and commissions.*—The regular land-office fee and commissions required on entries of these lands for 40 acres is $6.50; on entries for 80 acres, $8; on entries for 120 acres, $14.50; and on entries for 160 acres, $16.

9. *Coal lands.*—The schedule indicates that certain lands have been classified as coal lands. These lands are subject to disposition under the homestead laws, but the homestead applicant must agree to a reservation to the United States of the coal deposits therein and of the right in the United States, or those claiming through the United States, to prospect for, mine, and remove the same. The coal deposits shall be subject to disposal by the United States under the coal laws applicable thereto.

10. *Enlarged homesteads.*—The enlarged homestead act, approved February 19, 1909 (35 Stat. 639), shall not apply to these lands until six months after the lands have been opened to settlement and entry, and not then unless the lands have been designated under the act.

11. *Settlement before entry.*—No right can be acquired under the provisions of this proclamation by settlement before entry, until after the expiration of the period for filing simultaneous applications, mentioned in paragraph 2, and no right can be acquired by settlement to more than 160 acres, until after the expiration of six months from the date the lands become subject to entry, and until the lands have been designated under the enlarged homestead act.

12. *Completion of title.*—Title to these lands may be acquired by complying with the three year homestead law, or commutation proof may be submitted on all homestead entries, except entries made under the enlarged homestead act, which are not subject to commutation. In case of commutation of a homestead entry, however, the entryman will be required to pay in addition to the price fixed for entry, the sum of $1.25 per acre as consideration for the privilege of commutation.

13. *Forfeiture for nonpayment and reentry of lands.*—In case any entryman fails to make the annual payments, or any of them when due, all right in and to the lands covered by his entry shall cease; and any payments theretofore made shall be forfeited and the entry canceled. In the event of the cancellation of an entry for any cause,

the land shall be again subject to entry under the provisions of the homestead law at the price fixed therefor by the former entry; but in all cases the full amount of purchase money must be paid on or before the offer of final proof.

14. *Forms, rules and regulations.*—The Secretary of the Interior is hereby authorized to make any necessary additional regulations to carry the provisions of this proclamation and the act of February 11, 1915 (38 Stat. 807) into full force and effect.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this second day of October, in the year of our Lord 1916, and of the independence of the United States the one hundred and forty-first.

[SEAL.] WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

[No. 1348.]

[Reported, 50 L. D., 586]

CIRCULAR NO. 954

EXTENSION OF TIME TO MAKE PAYMENT—FORT ASSINNIBOINE ABANDONED MILITARY RESERVATION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 22, 1924.

REGISTER AND RECEIVER,
Havre, Mont.

GENTLEMEN: Public Resolution No. 29, entitled "Joint resolution providing an extension of time for payment by entrymen of lands on the Fort Assinniboine abandoned military reservation, in the State of Montana," which was approved June 7, 1924 (43 Stat. 666), reads as follows:

> That the act of January 6, 1921 (Forty-first Statutes at Large, page 1086), providing additional time for the payment of purchase money under homestead entries within the former Fort Assinniboine Military Reservation, in Montana, be, and the same is hereby, amended so as to authorize extensions of time from year to year for the payment of all unpaid principal upon the payment of interest thereon in advance at the rate specified in the said act, for not to exceed 10 years from date of entry.

The said act applies to the lands in the Fort Assinniboine abandoned military reservation, which was opened to entry on November 15, 1916, under the act of February 11, 1915 (38 Stat. 807).

The act of January 6, 1921 (41 Stat. 1086), and regulations thereunder, Circular 739 (48 L. D. 35) provided for an extension of time to make payment for one year by paying interest at 5 per cent per annum on the unpaid installments due before the date of the act. The unpaid installment due within the year subsequent to the date of the act could be extended for one year by paying interest thereon as above. The installments above extended could be further extended for a period of one year in like manner in the discretion of the Secretary of the Interior.

Circular No. 899 suspended action on the meritorious cases where entrymen were unable to make payment for not exceeding one year, pending action by Congress, and Circular 914, issued February 8, 1924, allowed extensions of time to make payment of installments due until December 31, 1924. The circulars required that the entrymen file affidavits corroborated by two other persons showing the reason why payment was not made. Interest was not required to be paid in the case of extensions of time to make payment granted under the said circulars.

The above act of January 6, 1921, and Circular 739 were amended by this act so that the extensions may be granted from year to year, though not for more than one year at a time, and extensions are limited to 10 years from the date of entry. Entrymen desiring an extension of time under this act should apply therefor and accompany the application with the required amount of interest at the rate of 5 per cent per annum, on the unpaid installments. You will grant the extensions when the interest required is paid, and note on the records period of extension and that the interest was paid in conformity with this act. Forward the application to this office. Interest will be collected on any installment for the period it was extended under the above circulars Nos. 899 and 914.

Very respectfully, WILLIAM SPRY, *Commissioner.*

Approved July 22, 1924.
E. C. FINNEY,
First Assistant Secretary.

FORT BRIDGER (EVANSTON LAND DISTRICT), FORT SANDERS, FORT LARAMIE (POST) MILITARY RESERVATIONS, AND FORT LARAMIE WOOD RESERVATION (CHEYENNE LAND DISTRICT)—RIGHT TO PURCHASE PASTURE AND GRAZING LAND THEREIN. HOMESTEAD LAW EXTENDED TO FORT LARAMIE WOOD RESERVATION

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 8, 1902.[2]

REGISTERS AND RECEIVERS,
Cheyenne and Evanston, Wyo.

SIRS: Your attention is called to the act of May 31, 1902 (32 Stat. 283), entitled:

> An act granting homesteaders on the abandoned Fort Bridger, Fort Sanders, and Fort Laramie military reservations and Fort Laramie Wood Reservation, in Wyoming, the right to purchase one quarter section of public land on said reservations as pasture or grazing land, and for other purposes,

a copy of which is hereto attached.

The act extends the homestead law to the abandoned Fort Laramie Wood Reservation.

Lands in the Fort Bridger (post) Reservation were made subject to disposal under the provisions of the homestead law by act of August 23, 1894 (28 Stat. 491), and in Fort Laramie (post) and Fort Sanders under the homestead law by act of July 10, 1890 (26 Stat. 227).

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[2] Amended by instructions of Jan. 29. 1912, p. 9.

You will be guided by the following instructions in your disposition of applications to purchase under this act:

1. The right of purchase is limited to persons who are residing on said reservations and who have made or who shall make homestead entries therein, and to persons who are residents and owners in fee of 160 acres thereon by purchase.

2. Persons desiring to avail themselves of the provisions of said act will be required to file an application describing the lands sought to be purchased, and to publish notice of their intention to submit proof in support of such application, as required by the act of March 3, 1879, in preemption and homestead cases. The application to purchase must, in every instance, show (*a*) that the applicant has exercised the right of homestead entry on land within the same reservation, the number and date of such entry, the description of the land covered thereby, and that such entry is still subsisting, or that he is a resident and the legal owner of 160 acres therein prior to May 31, 1902; (*b*) that the land applied for is not settled upon, occupied, or improved, and is not valuable for coal or mineral, and that it is nonsaline in character; that the land is suitable for pasture and grazing purposes; its location relative to sources of water supply, and the causes which it is claimed render it unfit for cultivation and homestead, and that the land sought to be purchased, with the land on which the applicant so exercised the right of homestead entry or the right of purchase, does not, in the aggregate, exceed 320 acres.

3. Should any adverse claimant appear or protest be filed against the applicant's right to purchase, the proceedings thereon will be conducted in accordance with the Rules of Practice in similar cases.

4. On the submission of such proof you will forward the same to this office for consideration, after having made due notation on your records. If the entryman has heretofore submitted final proof on his original homestead entry showing due compliance with law, or the applicant by purchase is shown satisfactorily to be the owner in fee of 160 acres, and the proof submitted under the application to purchase is found satisfactory, you will then be directed to permit the applicant to make payment for the land involved, and upon his making payment you will issue to him cash certificate and receipt of current number and date, noting thereon and upon the abstracts that the purchase is allowed under and in accordance with the provisions of the act of May 31, 1902.

If, however, it be found by this office, upon an examination of the application for the right to purchase, that the entryman has not yet submitted final proof on his homestead, said application will be held to await the completion of the original homestead entry. If it then be found that the said applicant has shown due compliance with law under the said homestead entry and his application is otherwise satisfactory, he will be allowed to complete his purchase by making payment for the land.

Very respectfully,

W. A. Richards,
Acting Commissioner.

Approved.

Thos. Ryan,
Acting Secretary.

(Act omitted.)

[Reported, 40 L. D., 392]

FORTS BRIDGER, SANDERS, AND LARAMIE MILITARY RESERVATIONS—PURCHASE OF GRAZING LANDS

Instructions

Department of the Interior,
General Land Office,
Washington, January 29, 1912.

Registers and Receivers,
Cheyenne and Evanston, Wyo.

Sirs: Paragraph No. 2 of the instructions governing the purchase of pasture and grazing lands on the abandoned Fort Bridger, Fort Sanders, and Fort Laramie Military Reservations, and Fort Laramie Wood Reservation, in Wyoming, under the act of May 31, 1902 (32 Stat. 283), is hereby amended to read as follows:

> 2. Persons desiring to avail themselves of the provisions of said act will be required to file an application describing the lands sought to be purchased, and to publish notice of their intention to submit proof in support of such application, as required by the act of March 3, 1879, in preemption and homestead cases. The application to purchase must, in every instance, show (*a*) that the applicant has exercised the right of homestead entry on land within the same reservation, the number and date of such entry, the description of the land covered thereby, and that such entry is still subsisting, or that he is a resident and the legal owner of 160 acres therein; (*b*) that the land applied for is not settled upon, occupied, or improved, and is not valuable for coal or mineral, and that it is nonsaline in character; that the land is suitable for pasture and grazing purposes; its location relative to sources of water supply and the causes which it is claimed render it unfit for cultivation and homestead, and that the land sought to be purchased, with the land which the applicant has since August 30, 1890, entered or acquired under the agricultural land laws, does not, in the aggregate, exceed 320 acres.

Very respectfully,
Fred Dennett, *Commissioner.*

Approved.

Carmi A. Thompson,
Assistant Secretary.

Circular No. 808

REGULATIONS FOR THE OPENING TO ENTRY OF LANDS IN NEW MEXICO (FORMERLY RESERVED FOR MILITARY PURPOSES, NEAR DEMING, N. MEX.), PORTION OF LAND IN FORT CUMMINGS ABANDONED MILITARY RESERVATION

Department of the Interior,
General Land Office,
Washington, February 14, 1922.

Register and Receiver,
Las Cruces, N. Mex.

Sirs: By Executive Order No. 2772, dated December 12, 1917, all the public lands in T. 22 S., R. 9 W., N. M. P. M., the title to which had not passed out of the United States, were temporarily withdrawn from settlement, filing, selection, entry, or sale, and reserved for military purposes.

By Executive Order No. 2879 dated June 6, 1918, all the public lands in T. 20 S., R. 9 W., T. 21 S., Rs. 8, 9, and 10 W.; and T. 22 S., Rs. 8 and 10 W., N. M. P. M., were temporarily withdrawn from settlement, entry, sale, or other forms of disposal, and reserved for military purposes for occupation and use for artillery practice.

Executive Order No. 3078, dated April 22, 1919, placed all lands in T. 21 S., Rs. 8 and 9 W., N. M. P. M., which had been reserved by Executive Order No. 2879, for military purposes, for occupancy and use for artillery practice, under the control of the Secretary of the Interior, for disposition, as provided by the act of July 5, 1884 (23 Stat. 103), "or as may be otherwise provided by law." August 25, 1919, said lands were opened to entry in accordance with departmental regulations of May 17, 1917 (46 L. D. 121), and citing departmental decision of May 6, 1919, in the case of ex parte Petronilo Garcia (47 L. D. 141).

By Executive Order No. 3402, dated February 11, 1921, the remaining lands reserved by the foregoing Executive Orders Nos. 2772 and 2879, having become useless for military purposes, were placed under the control of the Secretary of the Interior for disposition under section 1 of the act of July 5, 1884 (23 Stat. 103), "or as may be otherwise provided by law." Under date of April 1, 1921, copies of said Executive Order No. 3402 were sent to your office and you were informed that you would be later advised of the disposition to be made of said lands.

Following the decision of May 6, 1919, was the opening to entry, under date of April 8, 1920, of certain lands in your district, withdrawn by Executive Order No. 1927, May 2, 1914, and No. 1954 of June 6, 1914, for the Fort Bayard military road, New Mexico, which was restored by Executive Order No. 2393, June 15, 1916.

The lands to be now open to entry are T. 20 S., R. 9 W., T. 21 S., R. 10 W., and T. 22, Rs. 8, 9, and 10 W., containing approximately 55,178.48 acres, and are situated a few miles north of the town of Deming, N. Mex., and will be disposed of under the following regulations:

In the absence of other withdrawals or valid adverse claims, all of the vacant, unappropriated public land therein will become subject to entry under the homestead and desert land laws (the latter only in the event same is properly subject to such class of entry), with a preference right to qualified ex-service men of the war with Germany who have been honorably discharged or separated from the service, under the provisions of the act of February 14, 1920 (41 Stat. 434), as amended by the act of January 21, 1922 (42 Stat. 358).

PREFERENCE TO EX-SERVICE MEN

1. From April 10, 1922, to July 8, 1922, both dates inclusive, the lands may be entered only under the homestead laws and only by ex-service men of the war with Germany who have been honorably discharged or separated from the service or placed in the regular Army or Naval Reserve, provided, that from March 20, 1922, to April 8, 1922, both dates inclusive, applications may be presented by such persons under said laws, such applications to be treated as simultaneously filed and disposed of before action is taken on other preference applications.

GENERAL DISPOSITION

2. The lands, if any, not disposed of during said preference period will become subject to appropriation under any applicable land laws, including settlement under the homestead law in advance of entry, by any qualified persons, on July 24, 1922, and not before then, pro-

vided, that from July 10, 1922, to July 22, 1922, both dates inclusive, any qualified persons may present applications for the land under the homestead laws only, such applications to be treated as simultaneously filed and disposed of before action is taken on other nonpreference applications.

Part of sections 1, 2, 3, 4, and 5, T., 22 S., R. 8 W., N. M. P. M., containing 1,939.09 acres, were formerly a part of the Fort Cummings abandoned military reservation. The lands therein were appraised at $1.25 per acre and opened to entry in 1896.

Homestead entrymen will be required, in addition to complying with the usual requirements, to make payment for the land formerly embraced in this abandoned military reservation, at the appraised price of $1.25 per acre, which may be paid in full at the date of the acceptance of proof upon their entries, or at the option of the entrymen, payment may be made in five equal installments, the first payment to be made one year after the acceptance of the final proof, the subsequent payments to be made annually thereafter, with interest at the rate of 4 per cent per annum from date of acceptance of such proof. They will be allowed, however, to pay one or more even annual installments at any time, with interest to date of such payment. Upon acceptance of 3-year proof and payment in full, a final certificate may be issued, otherwise the certificate will not be issued until the final payment has been made.

The preference rights above provided for are subject to valid settlement rights or equitable claims recognized by existing laws, but such claims should be asserted during the 20-day period provided in paragraph 1.

In the event conflicts appear between applications treated as simultaneously filed, as herein provided, drawings will be held to determine the order in which the conflicting applications will be taken up for consideration.

Acknowledge receipt of these regulations, giving them all the publicity possible without expense to the Government by furnishing copies thereof for publication as an item of news to the various newspapers in your district. You will also post a copy of same in your office and transmit a copy to the postmaster nearest the land for posting in his office.

Very respectfully,

William Spry, *Commissioner.*

Approved February 14, 1922.

E. C. Finney,
First Assistant Secretary.

DISPOSAL OF LANDS IN FORT LOWELL ABANDONED MILITARY RESERVATION

Department of the Interior,
General Land Office,
Washington, D. C., March 14, 1904.

Register and Receiver,
Tucson, Ariz.

Gentlemen: That portion of the Fort Lowell abandoned military reservation situated in T. 14 S., Rs. 15 and 16 E., Gila and Salt River meridian, having been surveyed and appraised, and the appraisal thereof having been approved by the Secretary of the Interior, you will allow entries of these lands under act of August 23, 1894 (28 Stat. 491), which provides, among other things:

> That persons who enter under the homestead law shall pay for such lands at not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior.

In regard to such payments, departmental instructions of April 9, 1895 (20 L. D. 303), provide:

> That the homesteader be given the option in making payment upon his entry of these lands, of making his payments in five equal payments to date from the time of the acceptance of his proof tendered on his entry, and that the rate of interest upon deferred payments be charged at the rate of four per cent per annum.

In allowing entries of these lands, you will in each case indorse on the application "Fort Lowell Reservation, act August 23, 1894," and make the same note on the abstract of homestead entries.

Under the homestead law, an entryman has the rights either to commute his entry after 14 months' residence on and cultivation of the land, or to make final proof under section 2291 Revised Statutes, after five years' residence and cultivation.

If commutation proof is submitted, it must be accompanied with full payment for the land in cash or other legal consideration; but if ordinary 5-year proof is submitted, the entryman may make the payment in installments as above indicated.

Where full payment is made at time of offering proof, you will, if no objection appears, issue final papers as in other cases; but when payments are made in installments you will issue receipts only for so much of the principal and interest as may be paid, reporting the same in a special column of the abstracts of homesteads receipts.

When an entryman offers final proof and elects to pay for the lands in installments, you will examine the proof and, if found satisfactory, approve the same, make the proper notes on your records to show the facts, and forward the proof to this office in a special letter, for filing with the entry, as no final papers can issue until full payment is made.

Your attention is called to departmental decision of January 19, 1900, in the case of The State of Utah (29 L. D. 418), and you will be governed thereby in regard to section 16 or 36 of the above reservation.

Very respectfully,

J. H. Fimple,
Acting Commissioner.

Approved:

E. A. Hitchcock, *Secretary.*

Circular No. 1038

FORT MAGINNIS ABANDONED MILITARY RESERVATION—INSTRUCTIONS

Department of the Interior,
General Land Office,
Washington, October 30, 1925.

Register, *Billings Mont.*

Sir: Fort Maginnis Military Reservation, Mont., was turned over to the Department of the Interior for disposition under the act of

July 5, 1884 (23 Stat. 103), or as may be otherwise provided by law, on August 6, 1890. The reservation exceeded 5,000 acres and was mostly opened to homestead settlement and entry under the act of August 23, 1894 (28 Stat. 491), and the regulations approved September 22, 1897 (25 L. D. 260).

The unsurveyed portions of Tps. 16 and 17 N., R. 20 E., were subject to settlement but were not opened to entry at that time. Such portion of T. 16 was surveyed and the plat thereof approved April 24, 1914, and filed in the local land office at Lewistown, Mont., May 19, 1915. Such portion of T. 17 is shown to be surveyed by a plat approved December 19, 1907, filed March 27, 1908, and plat of mineral segregation survey of August 9, 1919, accepted December 4, 1920, and supplemental plat of November 24, 1922.

The appraisers have appraised the remaining lands on this reservation at from 75 cents to $12 per acre. The Secretary of the Interior has approved the appraisal of the lands appraised at $1.25 or more per acre and has fixed a minimum price of $1.25 per acre for lands appraised at less than $1.25 per acre.

Except lots 1 and 2, sec. 20, T. 16 N., R. 20 E., P. M.; lots 5, 6, 16, 17, 18, 19, 20, 22, and 23, sec. 22; lots 10, 11, and 12, sec. 23; lots 1, 2, and 3, NW. ¼ NE. ¼ sec. 27, and lots 1, 2, 3, and 4, sec. 33, T. 17 N., R. 20 E., P. M., all the land has been reported as prospectively valuable for gold and silver. Furthermore, it is reported by the appraisers that there are mining locations on various parts of the land. If these locations are valid and based on a sufficient discovery maintained in accordance with law, the locators have vested rights not only to the minerals but to the surface within their locations and such tracts can not be otherwise disposed of, but must eventually be segregated.

Applications for lots 1 and 2, sec. 20, T. 16 N., R. 20 E., P. M. (classified as coal land), must be made subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583), or of the stock-raising homestead act.

Except as to the land covered by valid mining locations, the subdivisions which have been reported as prospectively valuable for gold and silver may be entered under the stock-raising homestead act if and when designated as subject to entry thereunder.

However, except in so far as covered by valid mining locations, such subdivisions may be entered under the general homestead law, or under the enlarged homestead act, if designated thereunder, if it is shown by the affidavits of at least two experts or practical miners that the land is not in fact valuable for gold or silver, this in addition to the usual nonmineral affidavit.

Lands containing metalliferous minerals are subject to disposition under the mining laws.

Subject to the foregoing limitations, all of the lands described in the appraised list will become subject to entry under the homestead law and as provided in the act of August 23, 1894 (28 Stat. 491), at not less than the appraised price thereof by ex-service men of the war with Germany, under the terms and conditions of Public Resolution No. 29 of February 14, 1920 (41 Stat. 434), as amended by Public Resolution No. 36, approved January 21, 1922 (42 Stat. 358), Circular No. 822, for a period of 91 days, beginning with the twenty-eighth day from the date hereof. Thereafter any of said land remaining unentered will be subject to settlement and homestead entry by the general public.

Subsequent to the approval of these regulations and prior to the date of restoration to general disposition as herein provided for, no rights may be acquired to said land by settlement in advance of entry, or otherwise, except strictly in accordance herewith.

Persons having valid existing rights or equitable claims may avoid confusion by asserting such rights during the 20 days preceding the soldier's preference-right period.

Ex-service men should file certified copies of their certificates of discharge with their applications, and persons claiming other preference rights should file affidavits supporting such claims with their applications.

Entries under the enlarged homestead act, the stock raising act and entries subject to the act of June 22, 1910, supra, may not be commuted. However, as to entries made under the general homestead law, entryman may at his option commute after 14 months from the date of settlement, with full payment in cash. In all cases where the 3-year proof is submitted and after its acceptance entryman may pay for the land the full amount of the appraised value thereof, without interest or he may make payment in five equal installments, the first payment to be made one year after the acceptance of his final proof, and the subsequent payments to be made annually thereafter, interest to be charged at the rate of 4 per cent per annum from the date of the acceptance of final proof until all payments are made.

In case the full amount is paid after 14 months from date of settlement you will, if the proof is satisfactory, issue cash certificate and receipt; and in the event that regular final proof is made and the full amount then paid, you will issue final certificate and receipt; but when partial payments are made you will issue a receipt only for the amount of the principal and the interest paid, and at the time last payment is made you will issue the final papers as in ordinary homestead entries.

In issuing final papers you will make the proper annotations thereon, as well as on the applications and abstracts, to show that the entry covers land in Fort Maginnis Reservation.

Where, upon submitting final proofs the entrymen elect to make payment for the lands entered in five annual installments, you are authorized to make the usual charges for reducing the testimony to writing, but as the final certificate and receipt can not be issued until the last payment is made, you can not charge the final commissions until said certificate and receipt are issued. Therefore, if the proofs submitted are acceptable, you will make proper notes on your records showing that satisfactory proofs have been made and the dates upon which the partial payments must be made, and then transmit said proofs to this office for filing with the original entries.

Lots 7 and 10, sec. 3, and lots 1, 2, 3, 6, 7, 8, 9, 10, and 11, sec. 17, T. 16 N., R. 20 E., have been patented for more than six years and, although such tracts have been appraised and entered on said appraisement list, they are not subject to disposal under this appraisal. See the act of March 3, 1891 (26 Stat. 1093). Lots 1, 8, and 9, sec. 30, T. 16 N., R. 20 E., are claimed by William F. Sherman, who has made stock-raising additional homestead entry Lewistown 039072 for same, while lot 4, NE. ¼ NE. ¼, SW. ¼ NE. ¼ sec. 27, T. 17

N., R. 20 E., are included in the additional homestead entry of Edward Fields, Billings 027032 formerly Lewistown 034720 and the SW. ¼ NE. ¼, W. ½ SE. ¼ sec. 28, lots 1, 2, 3, and 4, NE. ¼ NW. ¼ sec. 33, T. 17 N., R. 20 E., are covered by stock-raising additional homestead entry Lewistown 040382 made by Reginald J. Meller. These entries will form the subject of further communications.

It is reported that William Swank has three mining locations on lot 15, sec. 5, T. 16 N., R. 20 E.; that William Vine has mining locations on lots 8 and 15, sec. 19, T. 16 N., R. 20 E., and that Henry Willard has two mining locations on the SE. ¼ NW. ¼, SW. ¼ NW. ¼, sec. 33, T. 17 N., R. 20 E., and has a cabin on the NE. ¼ SW. ¼ said sec. 33.

You will upon receipt hereof make the proper notations of this order upon your records, post a copy hereof in your office, and give as much publicity as possible to the opening as a matter of news without expense to the Government, by forwarding a copy of the order to the post office nearest the land for posting therein for the information of the public and by transmitting copies of such order or an item concerning the opening to the newspapers published nearest the land, being careful not to send such notice or items without calling particular attention to the fact that the same is sent as news and that the Government will not be responsible for the cost of any publication thereof.

Promptly report your compliance with the instructions herein contained.

Very respectfully,

D. K. Parrott,
Acting Assistant Commissioner.

Approved October 30, 1925.
E. C. Finney,
First Assistant Secretary.

(Schedule of lands and appraisements omitted.)

Circular No. 662

INSTRUCTIONS RELATIVE TO DISPOSAL OF CERTAIN LANDS IN ABANDONED MILITARY RESERVATIONS NUMBERED 23 AND 24, GIG HARBOR, WASH.

Department of the Interior,
General Land Office,
Washington, November 19, 1919.

Register and Receiver, *Seattle, Wash.*

Sirs: The act of Congress approved July 3, 1916 (39 Stat. 342), a copy of which is hereto attached, provides for the subdivision and sale of certain lands in abandoned military reservations numbered 23 and 24, Gig Harbor, within secs. 5 and 6, Tp. 20 N., R. 2 E., and secs. 21, 28, 31, 32, and 33, Tp. 21 N., R. 2 E., W. M., embracing 1,223.64 acres.

The lands have been subdivided into tracts of 20 acres or less, reference being made to supplemental plats approved July 20, 1918, which have been duly accepted, and filed in your office. The tracts covered thereby have been appraised, the sheets being in quadruplicate, which appraisement has been this day approved. One copy of such appraisement is inclosed for your information and files. The appraised price ranges from $5 to $12 per acre, the total appraised price being $8,942.09.

1. The E. ½ of NW. ¼ of SE. ¼ sec. 32, Tp. 21 N., R. 2 E., is granted by sec. 3 of said act of July 3, 1916, to school district numbered 71, of Pierce Co., Wash., upon payment of $2.50 per acre. Upon receipt of such payment, you will issue a cash certificate of entry, after which patent will issue in due course. You will give specific notice to the proper school authorities that application and payment for this tract are in order.

2. Any settler who was in actual occupation of any portion of the land described in section 1 of said act on January 1, 1910, who made actual settlement thereon in good faith for the purpose of securing a home, and who has since maintained his claim thereto, or any one who has since said date, succeeded to the occupation and interest of any such prior settler, or his heirs or assigns, is entitled to purchase the tract so settled upon, not exceeding 20 acres, according to the plat of survey above referred to. You will mail (registered) a copy of these regulations to each of the claimants, whose names will be found upon the appraisement sheets, promptly upon receipt hereof. They are allowed one year from date of approval of these regulations in which to file in your office an application to purchase under this act. This time limit is statutory and warning is given that the Land Department is without authority to extend such time; and any such lands not so applied for within one year from date of approval hereof will be disposed of at public sale to the highest bidder, under the act of July 5, 1884 (23 Stat. 103).

3. Proof required of purchasers hereunder will consist of their affidavits, corroborated by two witnesses, executed before any officer authorized to administer oaths in homestead cases, showing settlement by them on or before January 1, 1910, and maintenance thereof since that date, or showing that they have succeeded to the interest of such settlers, either directly or through their heirs. Evidence of citizenship, or declaration of intention to become a citizen, must also be furnished. Notice of intention to submit such proof and acquire title must be published not less than 30 days in a newspaper of general circulation in the vicinity of the lands, as required under the homestead laws and regulations.[a] Entry of land hereunder will exhaust the purchaser's right to make a homestead entry.

4. Purchasers are required to make payment of the appraised price, which may be made in one sum or, at the option of the purchaser, one-tenth in cash and the remainder in nine equal annual installments, with interest at 4 per cent per annum.

5. Current serial numbers will be assigned to all applications for lands hereunder. If full payments and satisfactory proof are submitted, a cash certificate of entry will be issued, but if the applicant elects to make payments upon the installment plan, you will issue a memorandum of sale in duplicate setting forth therein the purchase price of the land and the dates and amounts of the deferred install-

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[a] See instructions of Oct. 19, 1929, p. 1149.

ments. The original will be given the applicant and the duplicate will be forwarded to the General Land Office with the monthly returns for notation upon its records. Note on each certificate or memorandum the following: "Abd. Mil. Res. Nos. 23 and 24, Gig Harbor."

6. Publicity will be given this opening by publication of notice for four weeks in two newspapers of general circulation in the vicinity of the lands. A schedule of the lands involved herein and their appraised value is hereto attached.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved November 19, 1919.

Alexander T. Vogelsang,
First Assistant Secretary.

(Schedule and act omitted.)

[Reported, 48 L. D. 100]

Circular No. 752

INSTRUCTIONS RELATIVE TO DISPOSAL OF CERTAIN LANDS IN THE GIG HARBOR ABANDONED MILITARY RESERVATION, WASH.

Department of the Interior,
General Land Office,
Washington, April 29, 1921.

Register and Receiver,
Seattle, Wash.

Sirs: The act of Congress approved March 3, 1919 (40 Stat. 1319), a copy of which is hereto attached, provides for the appraisal and sale of lands in the Gig Harbor abandoned military reservation in the State of Washington in secs. 5 and 8, T. 21 N., R. 2 E., W. M., embracing 83.49 acres.

These lands have been subdivided into tracts as shown by supplemental plats approved January 11, 1921, which have been duly accepted and filed in your office. These tracts have been appraised, which appraisement has been duly approved. The total appraised price of said land is $1,583.98.

1. Any lawful lessee in actual occupancy on December 5, 1917, of any portion of the land described in section 1 of the said act who made actual settlement thereon in good faith under the terms of a lease by the War Department, or a sublease thereunder on said date, or the heirs or assignees of such lessee or sublessee shall be entitled to purchase for the appraised value one of such surveyed tracts so occupied, no right of purchase of such lessee or sublessee to exceed the lands actually occupied and improved by him on December 5, 1917, and in no case exceeding 10 acres in a body according to Government surveys and subdivisions thereof, upon the payment to the Government of a sum of money equal to the appraised value thereof.

2. You will mail (registered) a copy of these regulations to each of the claimants, whose names may be found upon the plat of survey

or the records of your office, promptly upon receipt hereof. They are allowed 90 days from the date of the approval of these regulations in which to file in your office an application to purchase under this act. This time limit is statutory and warning is given that the Land Department is without authority to extend such time. Any such lands not so applied for within 90 days from date of approval hereof will be subject to disposition under the act of July 5, 1884 (23 Stat. 103). Any offering thereunder will be subject to future regulations. Said lessees, sublessees, heirs, or assigns in occupancy of lawfully leased tracts on December 5, 1917, who do not purchase such tracts, shall have the privilege of removing from their tracts, prior to any such offering, any buildings placed thereon.

3. Proof required of purchasers hereunder will consist of their affidavits, corroborated by two witnesses, executed before any officer authorized to administer oaths in homestead cases, showing settlement by them on or before December 5, 1917, and maintenance thereon since that date, or showing that they have succeeded to the rights of an actual settler under the terms of a lease by the War Department or a sublease thereunder, or that they are the heirs or assignees of such lessee or sublessee. Evidence of citizenship, or declaration of intention to become a citizen, must also be furnished, and the assignees should furnish a copy of the instrument under which they hold, or preferably, the original thereof. Notice of intention to submit such proof and acquire title must be published not less than 30 days in a newspaper of general circulation in the vicinity of the land, as required under the homestead laws and regulations.

4. Purchasers are required to make payment of the appraised price, which may be made in one sum, or at the option of the purchaser, one-tenth in cash and the balance in nine equal, annual installments, with interest at 5 per cent per annum, payable annually as the purchaser may elect.

5. Current serial numbers will be assigned to all applications for lands hereunder. If full payment and satisfactory proof are submitted, you will issue a proper cash certificate, but if the applicant elects to make payment on the installment plan, you will issue a memorandum of sale in duplicate, setting forth therein the purchase price of the land and the dates and amounts of the deferred installments. The original will be given the applicant, and the duplicate will be forwarded to the General Land Office with the regular monthly returns. Note on each certificate or memorandum the following: "Gig Harbor abandoned military reservation. See act of March 3, 1919 (40 Stat. 1319)."

6. Publicity will be given this sale by publication of notice for four weeks in two newspapers in general circulation in the vicinity of the lands. A schedule of said lands and their appraised value is hereby attached.

Very respectfully,

William Spry, *Commissioner.*

Approved April 29, 1921.

E. C. Finney,
First Assistant Secretary.

(Schedule and act omitted.)

CIRCULAR NO. 896

DISPOSAL OF VASHON ISLAND ABANDONED MILITARY RESERVATION, WASHINGTON

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 1, 1923.

REGISTER AND RECEIVER,
Seattle, Wash.

GENTLEMEN: Under date of July 15, 1921, Congress passed an act (42 Stat. 142), a copy of which is hereto attached, providing for the appraisal and sale of the Vashon Island Military Reservation in the State of Washington, in secs. 1, 2, and 3, T. 21 N., R. 2 E., W. M.

The above act authorized the Secretary of the Interior to survey and subdivide the lands into tracts and lots to conform as far as practicable to the tracts and lots lawfully occupied by the tenants thereon as lessees or sublessees on May 1, 1920. The act then states that where actual settlement thereon was made in good faith under the terms of a certain lease held of the War Department by one James Batchelor, or a sublease thereunder, or anyone who has since said date succeeded to the occupation and interest of any such prior settler, his heirs or assigns, they shall be entitled to purchase for the appraised value one of such surveyed tracts so occupied, no right of purchase extending beyond the tract actually occupied and improved by a lawful lessee or sublessee on May 1, 1920, and in no case exceeding 20 acres in a body, upon the payment to the Government of a sum of money as required by the said act.

The plat of survey of the lands was accepted by this office on March 14, 1923. The total area of the lands embraced within the reservation is 474.20 acres, and this area has been subdivided into 46 separate tracts or lots, with the appraisement prices ranging from $50 to $185 per tract or lot, the total appraisement being $4,791.75.

On April 30, 1923, the plat of survey was forwarded to you and the plat will be treated as officially filed in your office on June 15, 1923. All persons desiring to assert a claim under the provisions of this act must on or before September 12, 1923, file in your office their application for same, together with a sum of money equal to at least one-tenth of the appraised price of the tract or lot, describing the lands to which their claims are asserted and setting forth fully all the facts as to occupancy and any and all facts which may be material in determining the rights of the parties. This application must be under oath and corroborated by two witnesses. The applications must show the source of title as well as all the recorded transfers or other instruments where same can be furnished. The applications when received should be assigned a current serial number.

Purchasers under this act are required to make payment of the appraised price which may be made in one sum, or at the option of the purchaser one-tenth in cash at the time of filing of the application and the balance in nine equal annual installments with interest at 5 per cent per annum, payable annually as the purchaser may elect.

Any land in this abandoned military reservation which is not covered by an application filed on or before September 12, 1923, will be disposed of under the act of July 5, 1884 (23 Stat. 103), subject to the privileges within a period to be fixed by the Secretary of the Interior to remove from the tracts or lots any buildings placed thereon by the occupants or claimants of the land.

A copy of this circular will be mailed (registered) by you to all parties whose names are of record as having an interest in the tracts or lots. On the plat of survey will be found the names of parties who have buildings or homes located on the lands. Transmit a copy of said circular to the postmaster nearest the land for posting in his office, and transmit a copy of the circular to the register of the State land office. You may also give as much publicity to these regulations as possible by the furnishing of a copy of same to the newspapers as a matter of news and without expense to the Government. Acknowledge receipt of these regulations and post a copy of same in your office.

Very respectfully,

William Spry, *Commissioner.*

Approved June 1, 1923.

E. C. Finney,
First Assistant Secretary.

(Act and list of appraisals omitted.)

ACCOUNTS

[Reported, 21 L. D. 77]

CIRCULAR INSTRUCTIONS RELATIVE TO DEPOSITS BY INDIVIDUALS FOR THE SURVEY OF PUBLIC LANDS UNDER SECTION 2401, REVISED STATUTES, AS AMENDED BY THE ACT OF AUGUST 20, 1894

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 7, 1895.[1]

To United States Surveyors-General and Registers and Receivers of United States District Land Offices.

GENTLEMEN: The circular of this office dated June 24, 1885, relative to surveys under the provisions of section 2401, Revised Statutes of the United States, and the acceptance by receivers of public moneys of certificates issued for deposits made under the provisions of said section is hereby revoked, and the following substituted therefor:

1. The provisions of law governing such surveys and the issue and application of certificates of deposit on account thereof are sections 2401, 2402, and 2403, as amended by the act of August 20, 1894.

SEC. 2401 (as amended by act of August 20, 1894). When the settlers in any township not mineral or reserved by the Government, or persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof, or when the owners or grantees of public lands of the United States under any law thereof, desire a survey made of the same under the authority of the surveyor-general, and shall file an application therefor in writing and shall deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey, together with all expenditures incident thereto without cost or claim for indemnity on the United States, it shall be lawful for the surveyor-general, under such instructions as may be given him by the Commissioner of the General Land Office and in accordance with law, to survey such township or such public lands owned by said grantees of the Government and make return thereof to the general and proper local land office: *Provided*, That no application shall be granted unless the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases for township and subdivisional surveys.

SEC. 2402. The deposit of moneys in a proper United States depository under the provisions of the preceding section, shall be deemed an appropriation of the sum so deposited for the objects contemplated by that section, and the Secretary of the Treasury is authorized to cause the sums so deposited to be placed to the credit of the proper appropriation for the surveying service, but any excesses over and above the actual cost of the surveys, comprising all expenses incident thereto for which they were severally deposited shall be repaid to the depositors respectively.

SEC. 2403 (as amended by the act of August 20, 1894). Where settlers or owners or grantees of public lands make deposits in accordance with the provisions of section twenty-four hundred and one, as hereby amended, certificates shall be issued for such deposits which may be used by settlers in part payment for the lands settled upon by them, the survey of which is paid for out of such deposits, or said certificates may be assigned by indorsement and may be received by the Government in payment for any public lands of the United States in the States where the surveys were made, entered or to be entered, under the laws thereof.

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[1] See Circular 562, p. 47.

APPLICATIONS FOR SURVEYS

2. The amended law authorizes applications for surveys by settlers or by persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof, or by the owners or grantees of public land of the United States under any law thereof.

SETTLERS' APPLICATIONS

3. The law contemplates *bona fide* surveys upon *bona fide* applications by actual settlers. Settlers are persons who have attached themselves permanently to the soil. Nomadic persons and persons employed by others to make applications for surveys or to make alleged settlements for the purpose of acquiring a title to lands to be transferred to others are not settlers within the meaning of the law and are not lawful applicants under the provisions allowing *settlers* to make deposit for public land surveys.

4. In the case of applications for surveys by settlers the body of such settlers in the township, the survey of which is desired, must join in the application. There must also be a sufficient number of settlers to show good faith and to indicate that the survey is honestly desired for the benefit of existing actual settlements as contemplated by law.

5. Applications for surveys must be made in writing, and must designate, as nearly as practicable, the township to be surveyed, and state that the applicants are well acquainted with the character and condition of the land included in said township, and that the same is not mineral or reserved by the Government. Such applications must also particularly describe the land sought to be surveyed, stating whether the same is cultivable, grazing, timber, desert, swamp, mountainous, rocky, etc., and the reasons why it is claimed to be nonmineral, and must state the number of settlers in the township, the character and duration of their inhabitancy of the land, the extent and value of their improvements, the uses made of the land, and the quantity under cultivation. The situation of the township in respect to lines of public communication, and the progress of the settlement of the country should be described, and all facts and circumstances stated which will enable an intelligent judgment to be formed in respect to the propriety of making the survey applied for. These statements must be verified by affidavit, and applicants must also declare that their applications are made in good faith and not for the purpose of enabling a surveying contract to be obtained nor at the instance or in the interest or for the benefit of any other person.

6. Townships within known mineral belts or known to contain mineral lands or lands reserved by the Government are *not* surveyable under this system.

7. Surveys under the deposit system are authorized only where "the township so proposed to be surveyed *is within the range of the regular progress of the public surveys embraced by existing standard lines or bases for the township and subdivisional surveys.*" Under-

this provision of the law it will be held that only township exteriors and subdivisional lines are surveyable and that the deposit system is not applicable to the survey of standard lines or bases.

8. Retracements, or the resurvey of lines previously surveyed, will not be deemed authorized under the deposit system.

9. Surveyors general will critically examine all applications for survey, testing the accuracy and reliability of the statements made by their knowledge of persons and lands and the best information they can obtain. They will reject all applications not believed by them to be made in good faith, and upon truthful statements of facts.

10. When an application for survey is approved by the surveyor general, he will transmit the same to this office with the required proofs and his report upon the same, giving his reasons in full for the recommendation made. It is not believed that fictitious applications, or applications procured at the instance of surveyors or of operators in contract surveys, or applications designed to open unsettled townships to fraudulent entry can successfully be imposed upon vigilant and faithful officers. Surveyors general will therefore be held to strict accountability for their recommendation of applications or contracts hereafter found to be fictitious, fraudulent, or speculative.

11. If the application is approved by this office it will be returned to the surveyor general with authority to furnish the necessary estimate to applicants, and, upon proper deposit being made to enter into contract for the execution of the survey.

12. The surveyor general will furnish applicants with two separate estimates, one for the field work and one for office expenses. He will estimate adequate sums, and the practice of requiring additional deposit to cover excess costs will be discontinued except when expressly authorized by this office.

13. Upon receiving such estimates applicants may deposit in a proper United States depository (which should be in the land district in which the township to be surveyed is situated) to the credit of the Treasurer of the United States on account of surveying the public lands and expenses incident thereto, the sum so estimated as the total cost of the survey including field and office work. If there be no public depository in the land district in which the lands are situated, the deposit may be made in an adjacent land district.

14. Surveyors general will not, under any circumstances, accept, for the purpose of making the deposit, moneys from applicants for surveys, either field or office work, but will instruct the applicants to deposit the amount in accordance with the instructions contained in the preceding paragraph.

15. For convenience in the use and application of certificates the deposit should be made in such sums as that no certificate shall bear a face value of more than $200.

16. Applicants must be instructed fully as to the necessity of immediately transmitting the *original* certificate to the Secretary of the Treasury, the *duplicate* to the surveyor general, and the retention of the *triplicate*.

17. When evidence of the required deposit is furnished in accordance with the foregoing regulations the surveyor general will invite proposals for the survey by notice posted in his office for a period of 30 days, specifying the survey to be made, and stating that the

contract will be let to the lowest responsible bidder (being a practical and reliable surveyor) at rates not exceeding those established by law for surveying the public lands. A copy of such notice will also be transmitted by the surveyor general to the register and receiver of the land district in which the township to be surveyed is situated, and it shall be the duty of registers and receivers to post such notices conspicuously in their office.

18. The surveyor general will prepare a contract with the accepted bidder, and transmit the same to this office for approval in the usual manner.

19. Triplicate certificates of deposit are receivable from the settlers making the deposits in part payment for the lands settled upon by them, the surveying of which is paid for out of such deposits.

20. The triplicate certificates may be assigned by indorsement, and when so assigned may be received in payment for any public lands of the United States entered or to be entered under the laws thereof in the States in which the lands surveyed for which the deposit was made are situated.

21.[2] Such certificates hereafter issued will not be regarded as assignable or receivable, until the township for the survey of which the deposit was made has been surveyed, and the plat thereof filed in the district land office.

22. Where the amount of a certificate or certificates is less than the value of the lands taken, the balance must be paid in cash.

23. Where the certificate is for an amount greater than the cost of the land, but is surrendered in full payment for such land, the receiver will indorse on the triplicate certificate the amount for which it is received, and will charge the United States with that amount only.

24. There is no provision of law authorizing the issue of duplicate certificates for certificates lost or destroyed.

EXCESS REPAYMENTS

25. Where the amount of the deposit is greater than the cost of the survey, including field and office work, the excess is repayable upon an account to be stated by the surveyor general.

26. The surveyor general will, in all cases, be careful to express upon the register's township plat the amount deposited by each individual, the cost of survey in the field and office work, and the amount to be refunded in each case.

27. Before transmitting accounts for refunding excesses the surveyor general will indorse on the back of the triplicate certificate the following, "$—— refunded to —— ——, by account transmitted to the General Land Office with letter dated ——," and will state in the account that he has made such indorsement. Where the whole amount deposited is to be refunded the surveyor general will require the depositor to surrender the triplicate certificate, and will transmit it to this office with the account.

28. No provision of law exists for refunding to other than the depositor, nor otherwise than as referred to in the preceding sections.

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[2] See revocation, p. 47.

ASSIGNMENTS

29. Certificates "may be assigned by indorsement." The indorsement required is that the person in whose name the deposit is made shall write his name on the back of the triplicate certificate.

30. When there are several parties to, or assignees of, one certificate, the register and receiver will make the proper indorsement on the triplicate certificate showing the satisfaction of the pro rata share of each party interested. They will make the same notes on the register's certificate of purchase and the receiver's original and duplicate receipts.

31. When the entire amount of a certificate is not satisfied at the same time, the triplicate should be retained by the receiver until satisfied. But such certificate should, as far as practicable, be satisfied during the current quarter.

32. Certificates are not receivable in payment of fees and commissions chargeable by registers and receivers under section 2238, Revised Statutes of the United States.

REGISTERS' AND RECEIVERS' RETURNS

33. In their monthly cash abstracts the register and receiver will designate the entries in which certificates of deposit are used and the balance paid in cash, if any, noting on the certificates of purchase and receipt the manner of payment. The receiver in his monthly account-current will debit the United States with the amount of such certificates, and in his quarterly accounts will specifiy each entry with these certificates, giving number, date, amount for which received, by whom and with whom the deposit was made, and debit the United States with the same.

34. The receiver must write across the face of each accepted certificate the date of its receipt in payment of land, the number of the entry, and description of the tracts sold.

35. Certificates received in payment for lands sold must be forwarded once a month to this office, with letter of transmittal and abstract. (Form 4–543.)

36. Surveyors general are directed to instruct their deputies that they must designate in the field notes and plats of their surveys the location of each and every settlement within a township surveyed, whether permanent in character or not, together with the names of such settlers and their improvements if any.

37. When no settlers are found in a township, the field notes of survey must expressly so state, and any omission to describe the settlements and improvements, or the absence of one or both in the field notes and plat, will be deemed a sufficient cause to infer fraud, and the accounts of the deputy will be suspended until such omission shall have been supplied. A suspension of the commission of the deputy will, in the meantime, take place, and all the facts will be reported to this office for consideration and action.

38. In every case of a contract heretofore or hereafter approved, which the surveyor general has reason to believe was fraudulently procured, such contracts and the accounts thereunder must be immediately suspended and the facts reported to this office.

CERTIFICATES ISSUED PRIOR TO AUGUST 20, 1894

39. Receivers of public moneys in accepting in payment for public lands, certificates issued for deposits made under the provisions of section 2401 (prior to the amendments of said section by the act of August 20, 1894), are guided by the following instructions:

40. The triplicate certificates representing such deposits are receivable from the settlers making the deposits in part payment for their lands entered under the preemption and homestead laws and situated in the township, the surveying of which was paid for out of such deposits.

41. The said triplicate certificates may be assigned by indorsements, and when so assigned be received in payment for lands "entered by settlers under the preemption and homestead laws" of the United States in accordance with the provisions contained in the following paragraphs:

42. Triplicate certificates issued prior to the act of March 3, 1879, can be used only in payment for lands situated in the township, the surveying of which was paid for out of such deposits.

43. Triplicate certificates issued subsequent to the act of March 3, 1879, and prior to the act of August 7, 1882, can be used in payment for lands in any land district.

44. Triplicate certificates issued on and after August 7, 1882, and prior to August 20, 1894, can be used in payment for lands only in the land district in which the surveyed township is situated, except when issued for additional deposits upon contracts entered into prior to August 7, 1882.

45. Triplicate certificates issued subsequent to the act of August 20, 1894, for additional deposits to cover cost of surveys under contracts entered into prior to August 20, 1894, can be used only in payment for lands "entered by settlers under the preemption and homestead laws" of the United States, and in conformity to existing law at the date such contract was made.

COAL CLAIMANTS' APPLICATIONS

In addition to the rights of settlers, referred to in the foregoing portions of this circular, sections 2401, 2402, and 2403 United States Revised Statutes, as amended by the act of August 20, 1894, embrace provisions in favor of "persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof."

The coal land laws contained in sections 2347 to 2352, United States Revised Statutes, provide methods by which persons properly qualified may become lawfully possessed of coal lands even before the survey of the lands, and be entitled to enter the same after survey. For particular information in regard thereto, reference is made to Departmental circular of July 31, 1882,[a] entitled "Coal Land Laws and Regulations Thereunder." Such parties, in cases where the tracts of which they are lawfully possessed are still unsurveyed, may, under said sections 2401, 2402, and 2403, as amended by act of August 20, 1894, apply to the surveyor general for the surveying district in which the lands are included, for a survey of the township or townships including the land according to the provisions of said sections. Such an application must be accompanied by the affidavit of the applicant or applicants substantially as prescribed for declaratory statements on page 7 of the said circular of July 31, 1882, corroborated by the testimony of two or more witnesses, in which the qualifications of the applicants, the character and location of the land indicating the township or townships in which it is included as nearly as practicable, and other essential facts must be so set forth as to satisfy the surveyor general that the case comes properly within the provisions of the law as above given. He will, thereupon, if he approves the application, transmit the same to this office, with the required proofs and his report. Subsequent proceedings will be governed by the regulations as hereinbefore given under the head of "Settlers' Applications."

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[a] Circular of July 31, 1882, has been superseded by Circular No. 557, dated July 7, 1917, p. 355.

OWNERS' OR GRANTEES' APPLICATIONS

The same rights accorded to settlers, and to persons and associations lawfully possessed of coal lands and otherwise qualified to make entry thereof, are extended also to "the owners or grantees of public lands of the United States under any law thereof," and substantially the same instructions will apply to the last mentioned class of cases as those above expressed with regard to the other classes of cases. The applicants must produce with their applications proof of their ownership of the land, to consist of their own affidavits, corroborated by witnesses, and such other proof as may be available to satisfy the surveyor general of the essential facts, including a showing of the location of the land, in what township or townships situated, as nearly as practicable, the statute making the grant, or other source of title, as well as the identity of the applicants with the true owners or grantees.

The surveyor general, if he approve the application, will transmit the same to this office, with the proofs and his report, as provided for in the other classes of cases. In regard to subsequent proceedings, the instructions given under the head of "Settlers' Applications" will generally apply.

S. W. Lamoreux, *Commissioner.*

Approved.

Wm. H. Sims, *Acting Secretary.*

[Reported, 29 L. D., 632]

CIRCULAR RELATING TO DEPOSITS BY RAILROAD COMPANIES FOR THE SURVEY OF PUBLIC LANDS

Department of the Interior,
General Land Office,
Washington, D. C., April 8, 1899.

To United States Surveyors General and Registers and Receivers of United States District Land Offices.

Gentlemen: Your attention is invited to the act of Congress approved February 27, 1899, entitled "An act to authorize the Commissioner of the General Land Office to cause public lands to be surveyed in certain cases." The act reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when any railroad company claiming a

grant of land under any act of Congress, desiring to secure the survey of any unsurveyed lands within the limits of its grant, shall file an application therefor in writing with the surveyor-general of the State in which the lands sought to be surveyed are situated, and deposit in a proper United States depository to the credit of the United States a sum sufficient to pay for such survey and for the examination thereof pursuant to law and the rules and regulations of the Department of the Interior under the direction of the Commissioner of the General Land Office, it shall thereupon be the duty of the Commissioner of the General Land Office, or the Director of the Geological Survey, as the case may be, to cause said lands to be surveyed.

For any deposits made by any railroad company hereunder, certificates shall be issued, which may be used by such railroad company, its successors or assigns, to the same extent as cash is now allowed in payment of entries of public lands under existing law and regulations for any public lands of the United States in the States where the surveys were made, or for any survey or office fees due the United States from such railroad company on account of surveys of lands within its grant. The Secretary of the Interior shall provide such rules and regulations as may be necessary for carrying out the foregoing provisions.

The provisions of law heretofore governing the survey (under the deposit system) of unsurveyed lands within the limits of a railroad land grant are contained in the act of August 20, 1894 (28 Stats. 423), amending sections 2401, 2402, and 2403 of the Revised Statutes of the United States.

The rules and regulations as heretofore prescribed by this department as necessary for carrying out the provisions of said act of August 20, 1894, are contained in the circular of this office dated August 7, 1895, and you are advised that said rules and regulations are applicable to the act of February 27, 1899, quoted above, and now in effect.

The surveyors general, however, in furnishing the applicants with an estimate as to the cost of the surveys desired, including the cost of both the field and office work (as heretofore required by paragraph 12, page 3, of said instructions), will hereafter include in their estimate the cost of the *examination* of such surveys as may be applied for by said railroad companies.

The triplicate of the set of certificates issued in the name of a railroad company for amounts deposited on account of such surveys will not only be receivable from such railroad company, its successors or assigns, by the receivers of public moneys for the several United States district land offices, in accordance with paragraph 20 of said circular of instructions dated August 7, 1895, but said certificates may also be surrendered to the Commissioner of the General Land Office by such railroad company, its successors or assigns, in payment for any survey or office fees due the United States from such railroad company on account of surveys of lands within its grant.

Very respectfully,

BINGER HERMANN, *Commissioner.*

Approved.

E. A. HITCHCOCK, *Secretary.*

CIRCULAR No. 121 [3]

ACCOUNTS—COST KEEPING

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 1, 1912.

United States Surveyors General.

SIRS: In order that a statement may be submitted with each township plat sent to this office showing the cost of surveying such township, you will, beginning with the receipt of these instructions, keep a record of the cost of surveying each township or part of township surveyed in your State from and after December 31, 1911.

Such cost will be taken up under two general heads, namely, "Overhead Expense" and "Operating Expense."

Overhead expense will include such expenses as are connected with the general administration and supervision of the work in the field and in the office—the salaries of the surveyor general, chief clerk, chief draftsman while engaged on work that can not be definitely charged to any particular township, official stenographer, finance clerk, messenger, janitor, assistant supervisor of surveys while engaged on supervisory work, and of all others whose time can not be definitely charged to any particular township; traveling expenses (including per diem in lieu of subsistence) of the assistant supervisor of surveys in connection with supervision; office rent; and depreciation on furniture and fixtures.

Operating expense will include such expenses as are incurred in connection with the actual survey in the field, writing up the field notes, and the work in the office in connection with the field notes, such as transcribing, computing, drafting, typewriting, and comparing.

Overhead expense and operating expense will each have two subheads, "Office" and "Field," having reference, of course, to the work done in the office and in the field, respectively.

The office overhead expense will be ascertained as follows: First, determine what part of the overhead expense of the office is chargeable to the survey of the public lands. Some offices have estimated that one-third is so chargeable. This, of course, each office will have to determine for itself. After this is determined divide the annual overhead expense so chargeable by the actual number of working days in the year and thus find the expense in connection with each work day. In arriving at the overhead expense in connection with a given township multiply the daily overhead expense by the number of days that that part of the office force engaged on work in connection with the survey of the public lands has spent on the township under consideration. If the whole of such force has not been working on that particular township, ascertain the number of days' work of the whole force the time spent is equivalent to. Say there are six men in the office engaged on this class of work; that one of them works 3 days on the township, one 4 days, one 5 days, and one 6 days, equivalent to one man for 18 days or the whole force for 3 days, the daily " Overhead expense " multiplied by three will give the overhead expense in connection with the township.

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[3] See Circulars Nos. 483, p. 41; 526, p. 45; 558, p. 47; 996, p. 1474; 1023, p. 140; and 1171, p. 161.

The field overhead expense consists of the salary, per diem and expenses of the assistant supervisor of surveys, which can be definitely ascertained in connection with a particular group from the assistant supervisor's weekly reports and vouchers for services and traveling and other expenses. Such expense should be apportioned to the different townships in the group in accordance with the apportionment of the field operating expense.

The field operating expense in connection with any particular township will be found in the following manner: After ascertaining the total expense in connection with the group, which will consist of all the expenses incident to the field work—salaries, transportation, subsistence, etc.; iron posts and freight on same; the wear and tear on the equipment owned by the Government, such as surveying instruments, horses, wagons, harness, tents, etc.; and the cost of writing up field notes—divide it by the total number of days spent on the line within the group. This will give the average cost of each day on the line, which multiplied by the actual number of days on the line in any particular township (to be ascertained from the progress reports) will give the cost of the survey of that township. By the words " actual number of days on the line " is meant the actual number of full days that the party has actually worked on the line within the group. Days on which no work is done on the line will not be counted at all and where the party is engaged on the line a part of a day only the fractional part will be counted. In connection with salaries, it will be necessary to add the expense to the Government of the annual leave taken. This should be done after the annual leave is taken, so there will be certainty as to the amount of leave the group is chargeable with. Of course, if the person talking leave has worked the entire season on the one group, all of his annual leave is chargeable to it. If he has worked on more than one group, the cost of leave should be apportioned according to the time spent on the different groups. The cost of running standard parallel and meridian lines will be treated the same as any other expense in connection with the group; that is, it will be apportioned to the various townships in the group according to the time spent on the line within the group. The time spent in the running of these standard parallel and meridian lines will not come within the meaning of the term above used, " actual number of days on the line," but the cost will be treated as expense incidental to the survey, the same as, for instance, transportation to the field.

The office operating expense in connection with any particular township will be ascertained as follows: Multiply the cost per day of each employee engaged on the township by the number of days that his time book shows that he worked on such township, and to the amounts thus obtained add the cost of stationary, depreciation on equipment, typewriters, drafting instruments, etc., and any other expense not included in overhead expense. The stationery, wear and tear on typewriters, drafting instruments, etc., will, of course, have to be estimated and prorated in the same manner as the overhead expense of the office.

In arriving at the cost of a day's work of an employee the days in a year on which no actual services are rendered shall not be counted, namely, Sundays, holidays, annual leave, and sick leave, the latter to be averaged. For instance, an employee drawing $1,200 a year is paid for 360 days, but in fact works 365 days, less the following: Sunday, 52; holiday, 7; Saturday half-holidays during the summer months, 6; annual leave, 30; and sick leave, say 4 days, a total of 99 days on which no services are rendered. Subtracting the 99 days from the 365 days leaves but 266 actual work. Dividing the $1,200 by 266 we have $4.51 for the rate per day instead of $3.33 as shown by the salary table. This also applies to the daily overhead expense in the office.

As the transportation secured on transportation requests and Government bills of lading is not paid for by the surveyors general, you will be advised of the cost of such transportation to the Government by means of the transportation request coupons and memorandum bills of lading, which you will instruct all employees working out of your office to send to you for transmittal to this office. The employee using the transportation request or bill of lading will note on the coupon or memorandum bill of lading the group to which chargeable, and on the face of the latter, in the last column, they will also note what the freight charges will be. This information, which has always been noted on the transportation request coupons, can be secured from the railroad company's agent at the shipping point. In order that this office may know that the coupons and memorandum bills of lading have been noted in the surveyor general's office, you will have noted in red across the face of each one, "Noted in S. G's office," with the initials of the person making the notation.

The cost of iron posts to the Government is as follows: Small size, $0.80; medium size, $1.10; and large size, $1.42. You will be advised of the freight charges on these iron posts from the place of manufacture to their destination as the railroad companies submit their bills to this office. You will also be advised by this office of all other direct settlements chargeable to surveys within your State.

Blank forms are being sent you under separate cover to enable you to properly carry out the instructions contained herein.

Form No. 4–380, as its heading indicates, is for the keeping of the cost of the field work by groups. On this form will first be entered in the proper column the inventory value of the equipment owned by the Government that is to be used in connection with the group. After this will be entered in their proper order all vouchers paid by you or any other special disbursing agent making disbursements in connection with surveys within your State that are chargeable to the group. These will be classified in accordance with the different headings, one line being used for each voucher, the total operating expense being carried to the first total column and the total amount of each voucher being carried to the second total column. When the bottom of the sheet is reached the columns should be totaled and carried forward to another sheet. In the direct-settlements column will be entered all amounts chargeable to the group that are paid by the chief disbursing clerk of the department or settled by the auditor direct. These amounts may be entered independent of the other entries; that is, the first amount may be entered on the first line, the second amount on the second line, and so on. When all the amounts chargeable to the group have been entered each column should be totaled, and on the line below the totals the total of the direct-settlement column should be classified, in the same manner as a voucher paid by you; that is, the amount chargeable to equipment should be entered in the equipment column, the amount chargeable to transportation in the transportation column, and so on, and the total operating expense should be carried to the first total column, the overhead expense to the column so headed, and the total to the last total column. After this classification the columns should again be totaled to show the total under each classification and under each head ("Operating expense" and "Overhead expense") and the total with which the group is chargeable irrespective of classifications and headings. To arrive at the net cost you will deduct from the total in each column all credits: First, the inventory value of the equipment owned by the Government on the completion of the field work, and if there are any provisions on hand on the completion of the group their value should also be deducted; next, any concessions that may be made by you on auditor's settlements, and any other credits that may arise in connection with the group. Credits appearing in vouchers need not be entered here as only the amount paid on a voucher should be entered in the first place.

Each office will be furnished with a rubber stamp, the imprint of which on this form after all entries have been made will indicate what is necessary to arrive at the net cost of the survey. It is considered better to have this in the form of a stamp than to have it printed on each blank, for the reason that several of these blanks will be used in connection with most groups, and, of course, the matter on the stamp, which covers several lines, will be needed on the last one only. Not to have the matter printed or stamped might result in the omission of something essential to the correct computation.

Form No. 4–380a will be used for recording the time and cost of each employee in connection with any township in the group, as well as the cost of the stationery, depreciation on office equipment, such as typewriters, drafting instruments, etc. In the column headed "Name of Employee" will be entered the name of each employee in the office engaged on any of the townships in the group whose time is chargeable to operating expense, and all other items entering into the office operating expense, such as stationery, depreciation on equipment, etc. In the second column, in connection with each employee, will be entered the rate per day, ascertained in accordance with instructions herein. The stationery and depreciation on equipment will be charged to each township in accordance with the time spent by the office force engaged on this class of work; that is, after it has been ascertained by computation what the average cost per day is under these heads in connection with survey work, multiply it by the number of days the part of the office force engaged on survey work spends on the township. The number of days should be the same as in connection with the overhead expense. The columns under the different townships, as indicated by the headings, are for the number of days the townships are chargeable with in connection with each employee, stationery, depreciation on equipment, etc., and what each amounts to in dollars and cents. The overhead expense will occupy but one line, the one immediately under the totals in connection with operating expense.

Form No. 4–380b is a recapitulation of the first two forms, and from it will be secured the information with which to report the costs of surveys to this office.

The reports will be submitted on the inclosed blanks, a separate report with each township plat. The report should be attached to the plat with a paper clip, and it will be pasted on the back of the mounted plat in this office.

Very respectfully,

FRED DENNETT, *Commissioner.*

(Form omitted.)

CIRCULAR No. 171

IN RE PURCHASE OF SUPPLIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 20, 1912.

United States Surveyors General.

GENTLEMEN: The Assistant Secretary of the Interior, under date of September 10, advised this office that supplies, such as stationery, drafting instruments, and material, etc., for use in connection with the surveys under special deposits, deposits by individuals, etc., can not be furnished by the department under a ruling by the Comptroller of the Treasury, of July 3, 1911, and requested that such directions be given as to the method which shall be adopted in procuring supplies hereafter, which the department can not supply.

In view of the foregoing, it is directed that hereafter when requiring supplies to be used in connection with the deposits for surveying public lands, and which are therefore properly chargeable to these deposits, you will submit your requisitions for the supplies required in the same manner as heretofore, accompanied by proposals from two or more bidders, whom you will call upon to submit same, using form 4–117a, when the matter of authorizing you to make the purchase will have attention. The proposals should be secured in triplicate, one copy of which only should accompany the requisition.

Until further advised, blanks of all forms which have a form number and are carried in stock, also tablets, will be supplied by the department without charge.

Please acknowledge receipt hereof.

Very respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 207[4]

ACCOUNTS—MEMORANDUM TRANSPORTATION REQUESTS AND BILLS OF LADING

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 3, 1913.

United States Surveyors General, United States Surveyors, and Others Engaged in the Survey of the Public Lands.

SIRS: In order that the United States surveyors general may have all the data necessary for their cost-keeping records, United States surveyors and others engaged in the survey of the public lands will hereafter forward the memorandum copies of all transportation requests and bills of lading used by them to the proper United States surveyors general. The location of the lands in connection with which the request or bill of lading is used will determine the United States surveyor general to whom the memorandum shall be sent.

These memorandum copies should always show the group and appropriation to which chargeable and the expense incurred by the use of the transportation request or bill of lading.

The surveyors general will at once, upon receipt of such memorandum copies, enter the amounts represented thereby on their cost-of-field-work sheet for the group chargeable and forward to this office.

Very respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 304

ACCOUNTS—MILITARY BOUNTY LAND WARRANTS, FORM 4-106a

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 6, 1914.

Receiver of Public Moneys, United States Land Offices.

SIRS: The Auditor for the Interior Department requires certain information to be set forth on the "Abstract of Certificates of Deposits on Account of Surveys, Military Bounty Land Warrants, Scrip, and Certificates of Location, Received as Cash" (Form 4–106a), which has heretofore been added in this office.

Hereafter, in preparing Form 4–106a, each military bounty land warrant accounted for thereon must be set forth by date of issuance of the warrant, number thereof, serial number, act of Congress under which it issued, name of party to whom issued, last assignee, area of land granted under the warrant, and the description of the land and area thereof for which the warrant is accepted in payment.

Very respectfully,

C. M. BRUCE, *Assistant Commissioner.*

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[4] See Circular No. 802, p. 128.

Circular No. 333 [5]

ACCOUNTS—SURVEYING WITHIN LAND GRANTS (REIMBURSABLE)

Department of the Interior,
General Land Office,
Washington, July 3, 1914.

United States Surveyors General and United States Surveyors.

Sirs: The Comptroller of the Treasury in a decision dated June 17, 1914, holds that it is not necessary that payment of a railroad's portion of the cost of a survey be made direct from the funds deposited under the act of June 25, 1910 (completing surveys within railroad land grants).

Therefore, to simplify the matter of disbursing and accounting, surveyors general will hereafter make payment of all expense of surveys within railroad land grants from the appropriation "Surveying within land grants (reimbursable)," and that appropriation will be reimbursed for the railroad's portion by transfer in the Treasury Department.

And in order that the appropriation "Surveying within land grants (reimbursable)" may be reimbursed the more rapidly from money in the Treasury not otherwise appropriated and from the fund arising under the operation of the act of June 25, 1910, surveyors will hereafter certify vouchers chargeable to this appropriation to the surveyors general for payment as soon as they may be perfected, and surveyors general will make payment as soon after their receipt as practicable and forward such vouchers, together with an independent abstract covering only such vouchers, to this office semimonthly, the vouchers paid from the 1st to the 15th, inclusive, to be transmitted not later than the 18th of the month and those paid from the 16th to the last day of the month, inclusive, not later than the 3d of the following month.

Strict compliance with these instructions is absolutely necessary in order to have at all times a sufficiently large working balance to meet the expense of the parties in the field, as no reimbursement or transfer may be made until the auditor is in receipt of a properly executed voucher evidencing the payment of the amount to be reimbursed to the appropriation.

This circular does not in any way affect the instructions relative to the monthly reports of disbursements and liabilities (Form 4–163), the transmittal of memorandum copies of vouchers at the end of each month, or the rendering of your quarterly accounts. The only difference will be that the vouchers under the appropriation "Surveying within land grants (reimbursable)" will not accompany your quarterly accounts, having been forwarded beforehand.

You will please deposit at once to the credit of the Treasurer of the United States your balance under the appropriation "Completing surveys within railroad land grants," except where you have authority to disburse this fund in connection with the appropriation for salaries in your office, in such case retaining enough to meet the expenses for the September quarter.

Very respectfully, Clay Tallman, *Commissioner.*

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[5] See Circular No. 441, p. 39.

[Reported, 44 L. D. 88]

CIRCULAR No. 408

PETITIONS FOR DESIGNATION UNDER ENLARGED HOMESTEAD ACTS—CEDED INDIAN LANDS—SUPPLEMENTAL INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 29, 1915.

Registers and Receivers, United States Land Offices.

SIRS: 1. Where an act opening ceded Indian lands to entry permits appropriation thereof under one of the enlarged homestead acts, but requires payment of part of the price at the time of entry, applications for original or additional entry, filed with petitions for designation, as provided by the act of March 4, 1915 (38 Stat. 1162), must be accompanied by deposit of said initial payment as well as of the fee and commissions.

2. The entire amount paid will be carried in the unearned money account, and will be repaid by the receiver, if the entry be not placed of record, on account of nondesignation of the land or for any other reason.

3. A person desiring to make original or additional entry for such lands, but not seeking a preference right of entry, may, without regard to the act of March 4, 1915, forward to the Secretary of the Interior, or to the Director of the United States Geological Survey, a petition for designation, so far as same is necessary, and no money need be paid in connection therewith. It is advisable to state in such petitions the reasons for forwarding them in the manner indicated.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

BO SWEENEY, *Assistant Secretary.*

CIRCULAR No. 419 [b]

ACCOUNTS—COMPENSATION BASED UPON CASH SALES OF INDIAN LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 30, 1915.

Registers and Receivers, United States Land Offices.

SIRS: The Comptroller of the Treasury has rendered the following decision which is promulgated for your benefit:

TREASURY DEPARTMENT,
Washington, June 18, 1915.

The honorable the SECRETARY OF THE INTERIOR.

SIR: I have your letter of June 12, 1915, requesting a decision as to whether registers and receivers of the United States Land Offices are entitled to commission on sales of Indian lands when the laws under which the sales are held do not provide for the payment of commissions.

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[b] See Circular No. 1069, p. 145.

Registers' and receivers' duties are prescribed by act of January 27, 1898 (30 Stat 234), which amends section 2234 of the Revised Statutes, and which provides:

"SEC. 2234. There shall be appointed by the President, by and with the advice and consent of the Senate, a register of the land office and a receiver of public moneys for each land district established by law, who shall have charge of and attend to the sale of public and Indian lands within their respective districts, as provided by law and official regulations, and receivers shall be accountable under their official bonds for the proceeds of such sales, and for all fees, commissions, or other moneys received by them under any provision of law or official regulation."

Compensation of these officers is fixed by section 2238, Revised Statutes, which provides:

"SEC. 2238. Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

"Second. A commission of one per centum on all moneys received at receiver's office."

Under section 2234, Revised Statutes, as amended, it is now the duty of registers and receivers to "have charge of and attend to the sale of" Indian lands in the same manner as the sale of public lands, and, consequently, section 2238, Revised Statutes, should be considered as the basis for computing payment for their services in connection with sale of Indian lands the same as in the sale of public lands. Of course, if the act providing for the sale of Indian lands *limits the amount of commissions* these officers are entitled to receive, it would be controlling, but, in all cases where the act authorizing the sale of Indian lands is *silent* as to the rate of commissions to be allowed registers and receivers, *they are entitled to the commission provided for in section 2238, Revised Statutes,* not to exceed the maximum prescribed in section 2240, Revised Statutes. (See 21 Comp. Dec. 251.)

Your question is answered accordingly.

Respectfully,

GEO. E. DOWNEY, *Comptroller.*

Section 2240, United States Revised Statutes, noted above, provides:

SEC. 2240. The compensation of registers and receivers, including salary, fees, and commissions, shall in no case exceed in the aggregate three thousand dollars a year each; and no register or receiver shall receive for any one quarter or fractional quarter more than a pro rata allowance of such maximum

The claims of the register and receiver must be stated on Form 4–665–g, in duplicate, using one of the blank lines for the purpose under the caption "1 per cent commissions on (name) Indian cash sales, as per abstract." If there are sales of land involving more than one Indian reservation such Indian fund must be set forth as a separate voucher and not consolidated as one item.

The payment of the claims will be made by the receiver of public moneys in his account under said title and bond, and not under his title and bond as special disbursing agent.

The total amount of the claims of both officers, in case of minimum offices only, must be *debited* the United States under the proper Indian fund or funds on one of the blank lines of the account current (Form 4–104–a), and in making the deposits to the credit of the Treasurer of the United States, the said amount will be deducted therefrom and paid to each officer.

The vouchers must accompany the receiver of public money's account current on Form 4–104–a.

The total amount paid to the register or receiver, including salary, fees, and commissions, and the commissions on Indian lands, must not exceed $3,000 to each officer in any one fiscal year.

The total amount *actually earned* by each officer as compensation may be paid to him, provided, that at the date of payment it does not exceed the prorate share of the maximum amount of $3,000 per annum allowed by law.

The excess of the maximum of earnings of any month within a fiscal year may be applied to minimum of earnings of any month within the same fiscal year, but the excess of maximum earnings of one fiscal year must not be applied to the minimum earnings of another year.

The excess of earnings of one appointment must not be applied to the minimum earnings of another appointment, even though it be of the same officer, and within the same or different fiscal years.

Very respectfully,

Clay Tallman, *Commissioner.*

Circular No. 438 [6]

RETURNS—REPORT OF PAYMENTS, SECTION 5, ACT OF MARCH 4, 1915 (38 STAT. 1138, 1161)

Department of the Interior,
General Land Office,
Washington, September 28, 1915.

Registers and Receivers, United States Land Offices.

Sirs: Reference is had to Circular No. 399,[c] regulations governing relief of desert-land entrymen under act of March 4, 1915 (38 Stat. 1138, 1161).

Upon the allowance of an application for relief by this office under the above instructions, the payment of 50 cents per acre must be reported on the " Schedule of allowances " for the month such money is applied, by serial and receipt numbers, designated as " D L Relief 3–4–15." When reporting such payments no area should be shown on said schedule.

Upon the issuance of final certificate in connection with an entry of this character, the final entry designated as " D L (final) 3–4–15," showing area and amount of payment of 75 cents per acre only should be shown on the " Schedule of allowances " for the month final certificate issues. In the " Remarks " column of said schedule notation should be made as follows: " 50 cents p. a. earned (giving date)."

When applying the payment of 50 cents per acre the notation " D L Relief 3–4–15 " must appear on the "Abstract of moneys returned or applied " (Form 4–103a) opposite report of the item.

In all cases where applications for relief, under the above-mentioned instructions, have been allowed since June 30, 1915, and report of the payments in connection therewith have not been made to this office on Form 4–115d (" Schedule of allowances "), you will, at once, submit supplemental schedule or schedules, as the case may be, for the month or months payments were earned, reporting same.

Please acknowledge receipt hereof on inclosed card.

Very respectfully,

C. M. Bruce, *Acting Commissioner.*

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[6] See Circular No. 471, p. 39.

[c] Circular No. 399 is not carried in this publication. The present governing instructions are contained in par. 34 et seq., Circular No. 474, p. 438.

Circular No. 439

RETURNS.—REPORT OF APPLICATIONS HELD BY CHIEF OF FIELD DIVISION

Department of the Interior,
General Land Office,
Washington, September 28, 1915.

Registers and Receivers, United States Land Offices.

Sirs: There is inclosed herewith a supply of Form 4–030 for your use in reporting applications held by chief of field division.

A report on said form must be submitted with your monthly returns for each desert-land application and application for sale of isolated tract which has been transmitted to the chief of field division and not returned by said officer in time to be forwarded with the returns for the month during which filed. Each report must be assembled in its numerical order. Care must be observed to show all the information called for by the form.

When a new supply is needed, prompt requisition should be made therefor.

Please acknowledge receipt hereof on inclosed card.

Very respectfully,

C. M. Bruce, *Acting Commissioner.*

Circular No. 441

ACCOUNTS.—CIRCULAR 333 AMENDED

Department of the Interior,
General Land Office,
Washington, October 1, 1915.

Purchasing Agents, Disbursing Agents, and Others.

Sirs:

* * * * * * *

That part of paragraph 3 of Circular 333 dated July 3, 1914, which requires surveyors general to forward semimonthly those vouchers chargeable to "surveying within land grants (reimbursable)," is hereby revoked effective from and after September 30, 1915, after which date those vouchers will be forwarded with the regular quarterly accounts.

Very respectfully,

C. M. Bruce, *Acting Commissioner.*

[Reported, 45 L. D. 84]

Circular No. 471

SUPPLEMENTAL INSTRUCTIONS UNDER SECTION 5 OF ACT OF MARCH 4, 1915 (38 STAT. 1161)

Department of the Interior,
General Land Office,
Washington, D. C., May 9, 1916.

Registers and Receivers, United States Land Offices.

Sirs: The following instructions are for your guidance in disposing of cases under section 5 of the act of March 4, 1915 (38 Stat. 1161), and are to be considered as supplementing, not superseding, the regulations embodied in Circular No. 399 [d] of April 13, 1915 (44 L. D. 56).

Applications for relief should ordinarily be transmitted with your returns for the month during which filed. If the entry is involved in contest proceedings, the application for relief should be transmitted by special letter. All elections to purchase should be transmitted with your returns for the month during which filed.

If the entryman files his election to purchase under paragraph 3 of the act within the 60 days allowed by regulations contained in Circular No. 399, he must tender therewith a payment sufficient in amount to cover the purchase price of the land involved in the entry at the rate of 50 cents per acre.

If the entryman has previously made the final payment of $1 an acre in connection with a former final proof under the desert-land laws in which case the relief is sought, and the same has been deposited and accounted for as earned, he may elect to have 50 cents per acre of said former payment applied in connection with his election to purchase under paragraph 3 of the act and the remainder of 50 cents per acre credited on the payment of 75 cents per acre required at the time the final proof is filed, and pay the additional sum of 25 cents per acre in cash.

Initial payments should be reported on the "Schedule of allowances" for the months the moneys are applied, in accordance with Circular No. 438, of September 28, 1915. In cases where final proof has been offered and credit of 50 cents per acre of the amount previously covered into the Treasury is requested, the payments should be reported on the above-mentioned schedule under dates of the filing of the elections, and reference should be made on said schedule to the numbers of the receipts which issued for such payments, and in the "Remarks" column to the dates the moneys were applied. Receipt numbers and amounts involved, together with a reference to letters from this office granting relief, should be noted on elections to purchase.

Where the payment of 50 cents per acre is made at the time the election to purchase is filed, relief having been granted by this office, such payment must be applied by the receiver on the date of the filing of the election. Should an election to purchase be filed in a case where relief has not been granted and the initial payment tendered, the moneys must be held by the receiver as "unearned moneys" until action is had by this office on the application for relief, and the moneys should then be applied or returned to the applicant in accordance with the action had by this office. Should credit for moneys previously covered into the Treasury be requested before relief is granted, and relief should subsequently be granted, such payment should be reported on the "Schedule of allowances" under date of the letter from this office granting relief. In no instance should the initial payment be reported on the "Schedule of allowances" prior to the granting of relief by this office.

In cases where the applicants elect to perfect their entries in the manner required of a homestead entryman such elections should not be reported on the "Schedule of allowances." Upon issuance of final certificates in such cases the final entries, designated as "DL (final) 3–4–15 residence," showing date, serial number, and area only, should, however, be reported on the schedule in question.

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[d] See footnote *c*, p. 38.

When credit is allowed for final purchase money previously covered into the Treasury and the balance remaining is not sufficient to cover the final purchase money due, and an additional amount is collected to cover such deficiency, the receipt issuing for the remainder should show the number of receipt which originally issued for the final purchase money and the amount credited thereon.

The only moneys authorized to be collected in connection with final proofs offered in support of entries perfected under paragraph 2, are testimony fees in cases where the proof is taken in your office, and the purchase price where the entry is perfected under the commutation provisions of the homestead law. Where entries are perfected under paragraph 3, and the final proof depositions are taken in your office, the usual fee for transcribing the testimony may be charged, as in ordinary desert-land proofs, and, in addition, the balance (75 cents) of the purchase price should be collected. No commissions may be charged under any circumstances, and no testimony fees unless the proof is taken at your office.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones,
First Assistant Secretary.

Circular No. 483[7]

ACCOUNTS—RECEIPTS FOR OFFICE WORK

Department of the Interior,
General Land Office,
Washington, June 29, 1916.

United States Surveyors General.

Sirs: Circular No. 422, "Accounts—work done in offices of surveyors general," is hereby amended to read as follows:

No clerk, draftsman, or other employee in the office of a surveyor general shall be assigned to or begin work on any transcripts of records, plats, or other like work for which the applicants are required to deposit the cost with the surveyor general, until the amount of such cost has been deposited, the receipt issued therefor, and the serial number of such receipt indorsed on the record or paper to be copied.

For each and every amount received by a surveyor general as cost of office work to be performed he shall issue a receipt (Form 4–129), making a memorandum copy by carbon process, the original to be delivered to the depositor and the memorandum copy to be forwarded to this office at the end of the quarter with the abstract of moneys received. All such moneys received must be receipted for on the day in which they come into the custody or control of the survey general and must be deposited to official credit (subject to the surveyor general's official check) as "Special deposits—unearned moneys." Such moneys may be deposited at the close of each business day or at the close of each month, but there must be absolutely no exception to the rule that every cent received by a surveyor general to cover cost of transcripts of records or other office work must be deposited with his depository to his *official* credit and that any amount returned to a depositor or deposited to *personal* credit as "Miscellaneous receipts—copies of records," shall be by official check (using regular series and form), against his "Special deposits—unearned moneys" account.

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[7] See Circulars Nos. 121, p. 29; 526, p. 45; 558, p. 47; and 1171, p. 161.

But one form of receipt blank will be used by surveyors general, namely, Form 4–129. These receipts are numbered and must be used in consecutive, numerical order, each surveyor general using first the lowest numbered receipt sent him. Any receipt blank that is mutilated or spoiled, in any manner, should be marked plainly across its face "Canceled," and be placed in proper numerical order with the copies of receipts transmitted with the "Abstracts of moneys received." Surveyors general must account for every receipt blank issued to them.

Under the act of Congress approved March 3, 1913 (37 Stat. 733), surveyors general may accept cash, currency, such certified checks drawn in their favor on National or State banks and trust companies as can be cashed without expense to the Government, and United States postal money orders made payable to the order of the surveyor general by the post office where they are issued and drawn on the post office where the surveyor general is located. Surveyors general must not accept, or issue receipts for, remittances tendered in any other form.

Whenever the work pertaining to a particular deposit is completed and delivered, or transmitted, the cost thereof will be immediately posted as "Applied," on the abstract of moneys returned or applied (or a like office record, a copy of which is to become the quarterly abstract of moneys returned or applied), and the amount, if any, by which the deposit exceeds the cost of the work will be immediately returned to the depositor by official check (using the regular form and current number), drawn against the surveyor general's account of "Special deposits—unearned moneys," on which check will be noted the depositor's receipt number.

In view of the small amounts involved it will not be necessary for the surveyor general to draw his official check each time an amount is earned, but at the end of each quarter he shall draw his official check against his account of "Special deposits—unearned moneys," for the total amount earned (or applied) during the quarter "For deposit to the credit of the Treasurer of the United States," indorsing on such check the serial number of each and every receipt on account of which the deposit is made.

At the end of each quarter the surveyor general shall submit an abstract of moneys received, in which he will show, as to the receipt of "Special deposits—unearned moneys," the date of each receipt, the number of the receipt issued, the name of the depositor, the purpose for which the deposit was made, and the amount; and will also show (as to the deposit to official credit of the cash so received) the date, number, and amount of each certificate of deposit (Form 6599) of the cash so received. The "Abstract of collections" (Form

4–106b) will serve this purpose, using the columns as indicated by their headings, except that each deposit to official credit shall be entered on the line following the receipt, or receipts, it covers, the date in the date column, the certificate of deposit number in the receipt number column, and the amount on the right-hand side of the column headed "For what purpose." Observe the following sample:

Abstract of collections

Date	Receipt number	Name	For what purpose	Amount	
1916					
Jan. 3	356	Morris & Morris	Field notes		$1. 50
10	357	G. H. Hummer	Plat		4. 00
26	358	James Taylor	Transcript		7. 00
Jan. 31	CD11	(Form 6599)		$12. 50	
Feb. 9	359	C. L. Stuart	Plat		6. 00
Feb. 29	CD15			6. 00	
Mar. 11	360	Clemens Map Co	Certificate		. 50
23	361	Dale E. Williams	Plat		10. 00
24	362	S. E. Countryman	Field notes		2. 50
27	363	C. A. Crow	do		1. 50
Mar. 31	CD22			14. 50	
		Total		33. 00	33. 00

The surveyor general shall also submit at the close of each quarter an "Abstract of moneys returned or applied" (Form 4–103–d), which shall show the date the work under each deposit is completed (and the money earned), and the excess (if any), returned to the depositor; the number of the surveyor general's check issued in returning each excess (check on regular form and series), the amount of such excess returned, the amount earned and applied in connection with each deposit, and the total amount returned and applied in connection with each receipt, which of course, will in each case agree with the amount for which the receipt was issued. The abstract will also show the date, the check number and the amount of "applied" money deposited at the end of the quarter to the surveyor general's personal credit (Treasurer's Form 5252, Assistant Treasurer's Form 1709, National Bank Form 1). Observe the following example:

Abstract of moneys returned or applied

Date	Receipt	Name of depositor	Check	Returned	Applied	total
1916						
Jan. 3	356	Morris & Morris	6127	$3. 00	$1. 50	$1. 50
12	357	C. H. Hummer		1. 00	1. 00	4. 00
28	358	James Taylor			7. 00	7. 00
Feb. 10	359	C. L. Stuart	6231	1. 00	5. 00	6. 00
Mar. 11	360	Clemens Map Co			. 50	. 50
25	361	Dale E. Williams	6239	2. 50	7. 50	10. 00
31	CD5437	Applied	6248			
					22. 50	
		Total		7. 50	22. 50	29. 00

In the new form of account current, a column, following the "Total" column, and separated therefrom by a heavy line, is provided for "Special deposits—unearned moneys," and in that column there will be shown under the "Credits," the balance from the preceding quarter and the total amount received and receipted for (collections) during the quarter, and under the "Debits," the amount returned to depositors, the amount "Applied" (and by that act carried to the fund "Work done in office of surveyor general," under which head it will be entered in the "Credits" on the line "Collections, as shown by abstracts"), and the balance due depositors (or unearned or unapplied), at the close of the period.

This balance will not only be entered in its proper place on the account current, but will also be included in the analyzed balance. Supposing the actual balance due the United States as shown in the "Total" column to be $1,997.80 (of which $1.80 is cash on hand), and the balance under "Special deposits—unearned moneys" to be as indicated in the foregoing sample abstracts $4, the analysis of balance due the United States would be as follows:

ANALYSIS OF BALANCE DUE THE UNITED STATES

Deposited with the Treasurer of the United States to official credit	$2,500.00	
Less outstanding checks	500.00	
		$2,000.00
Cash on hand (in office safe)		1.80
Total		2,001.80
Less "Special deposits—unearned moneys"		4.00
		1,997.80

Of course all amounts of cash received must be entered on the debit side of the cash account and there need be no distinction made therein between receipts on account of "Special deposits—unearned moneys," and receipts from any other source. The receipts need not be posted as separate items, but at the end of each month the amount received during the month may be posted as "Special deposits" per abstract. The date, certificate number (Form 6599), and amount of each deposit of cash to official credit must of course be shown on the credit side of the cash account.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved June 29, 1916.

Andrieus A. Jones,
First Assistant Secretary.

ACCOUNTS—DAILY REPORTS

Department of the Interior,
General Land Office,
Washington, September 30, 1916.

To Detailed Clerks and Others:

On and after October 16, 1916, all detailed clerks and other employees not in the surveying force (who render weekly reports) or regular field service (who submit daily reports), will render daily reports for all periods of service outside of the District of Columbia, adapting Form 4–509 until another form is provided. These reports will show traveling expenses incurred, transportation requests or mileage used, hour of arrival at and departure from each place officially visited, and a brief synopsis of the work performed. They are to be mailed at the close of each day's work in envelopes addressed to "The Commissioner of the General Land Office." On the lower left-hand corners of these envelopes should be plainly written "Daily work report of," followed by the name and official designation of the employee.

Expense vouchers will not be approved until reports for all the days covered thereby are received in this office.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR NO. 512

NOTATIONS ON PAPERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 20, 1916.

Registers and Receivers, United States Land Offices.

SIRS: There have been mailed to each district office two rubber stamps for use in indicating the hour and date of receipt of all papers, and two stamps for use in connection with relinquishments: "Received U. S. Land Office, Roswell, N. Mex.; date, ——; hour, ——." "Entry canceled on records, ——, register."

No stamps other than these should be used hereafter for the purposes indicated.

On all applications to make entry, an impression of the "received" stamp should be made in the upper right-hand corner, care being used not to interfere with the space left on the printed form for the insertion of the serial number. The stamp furnished with Circular No. 107,[e] to indicate moneys paid, should be impressed on the upper left-hand corner, at least 1 inch from the top.

The date and hour of the receipt of all papers must be inserted in the spaces provided in the new stamp. It will not be necessary for either officer to sign his name thereto, but in the case of relinquishments the register must sign his name below an impression of the stamp "Entry canceled on records."

The date that plats of survey are filed as well as received should be noted thereon.

Very respectfully,

C. M. BRUCE, *Acting Commissioner.*

CIRCULAR NO. 526 [8]

ACCOUNTS—COST KEEPING

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 1, 1917.

United States Surveyors General, Supervisors, and others.

SIRS: That part of the last paragraph, page 2 of Circular No. 121, dated June 1, 1912, "Accounts—costs keeping," which reads "in connection with salaries, * * * leave should be apportioned according to the time spent on the different groups," is hereby abrogated and the cost of annual and sick leave of employees connected with the field surveying service will, beginning with February 1, 1917, be charged as follows:

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[e] Circular No. 107 forwarding hand stamp and giving directions for its use is not carried in this publication. For later instructions, see Circular 616, par. 70, p. 64.

[8] See Circulars Nos. 121, p. 29; 483, p. 41; 558, p. 47; and 1171, p. 161.

Salary for all periods of leave with pay will be charged to and paid from the appropriation for surveying the public land regardless of the appropriation under which the employee is working before and after the leave is taken. Such amounts will not be charged to any particular group, reservations, or other piece of work, but will be treated as a miscellaneous expense. Vouchers will be marked to show what periods are covered by leave. Sundays and legal holidays are to be charged the same as the day immediately preceding them, both when the employee is on leave of absence and when he is performing actual service.

If the special disbursing agent to whom such a voucher is presented for payment has no funds belonging to the appropriation for surveying the public lands, and anticipates no other need for such funds, the amount chargeable on account of leave should be suspended and a supplemental voucher covering same showing the number of the original voucher should be sent to the supervisor of surveys at Denver, Colo., for payment. A case of this kind will be very rare.

During the past fiscal year salary for leaves of absence with pay amounted to approximately 1.62 per cent of the total expense incident to field work under all surveying appropriations. When the total field cost under any particular piece of work is ascertained (exclusive of amounts actually paid on account of leaves of absence which are not to be charged), 1.62 per cent thereof is to be added as a flat charge on account of leave of absence. As soon as possible after July 1 and not later than August 1 of each year, the sum total charges on account of leave during the fiscal year then ended will be reported to the General Land Office. The cost cards will be totaled as of June 30 to include work in progress as well as work that has been completed. Any entries on the cost record of payments made after June 30 will not figure in the current report but in the report for the next year. Care must be exercised to see that amounts reported on incomplete work are not included in the succeeding report.

In addition to showing the total amount charged under each appropriation, these reports must show the amounts chargeable to each Indian reservation in connection with Indian surveys, and the amounts chargeable to each railroad company separately in connection with railroad deposits.

The information for these reports may be carried to a summary sheet from time to time during the fiscal year, or compiled at the end of the fiscal year, at the discretion of the officer responsible therefor. The first report will cover the period from February 1 to June 30, 1917, only.

A reimbursable voucher will be stated by the General Land Office on information furnished by these reports for settlement in the Treasury by transfer of funds, crediting the appropriation for surveying the public lands, and charging the other surveying appropriations with the amounts chargeable by the cost-keeping record with leaves of absence. In this manner, every appropriation will be charged in even proportion with the cost of leaves of absence with pay during a year. If the ratio varies materially from 1.62 during any year, a new percentage basis will be adopted for subsequent years.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR NO. 558 [9]

ACCOUNTS—COST KEEPING

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 30, 1917.

United States Surveyors General.

SIRS: The second and third paragraphs of circular of December 3, 1914, are hereby revoked and the circular amended to read as follows:

> In view of the Comptroller's decisions of February 28, 1913, November 7, 1913, and September 28, 1914, deposits made for mineral surveys, in accordance with paragraph 91 of the Mining Regulations of 1901, act of March 3, 1901 (31 Stat. 960), and act of February 24, 1909 (35 Stat. 645), shall not, with the exception hereinafter noted, be charged with an overhead expense. The exception is found in act of March 3, 1901, cited above, which specifically provides that such deposits shall be charged with the rent of additional quarters.
>
> Depositors under sections 2401 and 2402, Revised Statutes, under section 21 of the act of July 2, 1864 (13 Stat. 365), under act of February 27, 1899 (30 Stat. 892), and under act of June 25, 1910 (36 Stat. 834), are chargeable with no overhead expense except the salary, per diem, and expenses of the assistant supervisor of surveys, but surveyors general will hereafter include on their reports of cost of survey and office work (Form 4–380c) all the overhead charges enumerated in Circular No. 121.
>
> This method will furnish complete data for making a comparison of the cost of surveys in different States and under different conditions, as well as the data necessary for making a charge against those depositors who are not chargeable with an office overhead expense.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 46 L. D. 178]

CIRCULAR NO. 562

DEPOSITS BY INDIVIDUALS FOR SURVEY OF PUBLIC LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 9, 1917.

United States Surveyors General and Registers and Receivers of U. S. Land Offices:

Paragraph 21 of Circular of Instructions dated August 7, 1895, relative to deposits by individuals for the survey of public lands under section 2401, Revised Statutes, as amended by the act of August 20, 1894, is hereby revoked.

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[9] See Circulars Nos. 121, p. 29; 483, p. 41; 526, p. 45; and 1171, p. 161.

The revoked paragraph reads as follows:

Such certificates hereafter issued will not be regarded as assignable or receivable until the township for the survey of which the deposit was made has been surveyed, and the plat thereof filed in the district land office.

Clay Tallman, *Commissioner.*

Approved August 9, 1917.

Alexander T. Vogelsang,
First Assistant Secretary.

Department of the Interior,
General Land Office,
Washington, August 9, 1918.

The honorable the Secretary of the Interior.

Sir: I submit herewith a complete revision, prepared by our Accounts Division, of the General Land Office circular relating to the method of keeping records and accounts of transactions affecting the public lands. The revision is in harmony with existing law, Comptroller's Decisions, and current departmental and General Land Office regulations; it covers the necessary detailed instructions and information relative to records and accounts for the use of all officers and employees of this bureau. I have the honor to recommend that same receive your approval.

Respectfully,

Clay Tallman, *Commissioner.*

Approved August 9, 1918.

Franklin K. Lane,
Secretary of the Interior.

[Reported, 46 L. D. 513]

Circular No. 616 [10]

METHODS OF KEEPING RECORDS AND ACCOUNTS RELATING TO THE PUBLIC LANDS, APPROVED AUGUST 9. 1918

Returns

GENERAL INSTRUCTIONS

1. The following instructions will take effect on and after January 1, 1919.

2. All orders, circulars, and instructions in conflict herewith are hereby canceled and revoked.

SERIAL NUMBERS

3. *Use only one series.*—Each office will maintain but one series of numbers, and all kinds of applications, entries, selections, locations,

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[10] Amended by Circulars Nos. 715, p. 125; 747, p. 127; 762, p. 127; 877, p. 133; 885, p. 134; 923, p. 137; 985, p. 139; 1008, p. 140; 1033, p. 143; 1148, p. 154; and 1196, p. 164. Also amended by instructions of Feb. 28, 1924, p. 137, and May 9, 1924, p. 138. Standard Government Travel Regulations, as amended, were approved by the President Dec. 19, 1928, and became effective Mar. 1, 1929. These regulations, issued as a separate publication, supersede all instructions in Circular 616 and the amendments thereto which are in conflict therewith.

etc., for the use, segregation, purchase, or disposition of a part of the public domain, will be numbered with this one series, such numbers to be preceded by 0. The "0" is used to prevent conflict with any number of the various series in use prior to July 1, 1908.

4. *When to be used.*—Each declaration, application, or other initial paper required in any entry, sale of land, selection, location, etc., will be numbered AT THE TIME AND IN THE ORDER in which it is presented or received at the district land office, without regard to whether it is subsequently allowed or rejected, as required by circular of June 10, 1908.

5. *Merely for identification.*—The giving of a serial number to an application, entry, selection, location, etc., does not mean that same is allowed or approved, or will be allowed or approved. It is merely an identification number of the case, as it were, by which it will always in the future be identified.

6. Fractional serial numbers are not to be used.

7. *All subsequent papers bear same number.*—After the initial declaration, application, or other paper required in any entry, sale of land, selection, location, etc., is once numbered, all subsequent papers filed or issued in connection therewith must bear the same number as is given the initial paper.

8. *Where no money is tendered.*—Applications, declarations, etc., which are not accompanied by the proper remittances in form or in amount required by law or regulations to be tendered at the same time they are filed will be assigned current serial numbers. You should note such applications, etc., on the "Serial Number Register," hereinafter referred to. Where no money is tendered, the application etc., will be rejected. On such rejection, the applicant, of course, has the right of appeal within 30 days, under the "Rules of Practice," merely against rejection of the application, however, for the reason that no money was received therewith, unless, of course, there are additional causes for rejection at the time the application is received by you. You will not in such cases, pending the receipt of the money, segregate the land, as the law and regulations are specific in that the money must be tendered with the application, and if it is not transmitted the applicant acquires no rights under the application until the money is tendered. If the applicant should transmit the money, and the land has not in the meantime been segregated, the application should retain the same serial number as was given it at the time of filing, and action thereon may be taken in accordance with the regulations. A new application need not be filed, but it must be plainly noted in the upper left-hand corner of the application that it was received without the money, and that the money was subsequently tendered. The exact time and date of the tender of the money should also be noted on the application. In the remarks column of the general "Schedule of Serial Numbers," requires under paragraph 40, opposite report of the serial number of the application, you must note "No money." However, if the money is tendered before the returns for the month in which the application is filed are transmitted, the notation "No money" need not be made on the general schedule, but the number of the receipt which issued for the money will be noted in the receipt number column of said schedule. Where any form of remittance other than those specified

in paragraph 72 hereof is tendered or where an insufficient amount is tendered in any form, you will merely suspend the application, etc., and allow the party 30 days in which to tender the required amount. You will not issue receipts for remittances tendered in any form other than those mentioned in paragraph 72 hereof.

9. *S. D. S. and application take same number.*—Where a soldier's declaratory statement has been filed, a homestead application by the same applicant, or his widow or heirs, for the same land or any part thereof, must take the same serial number as given to the declaratory statement, without regard to whether it is subsequently allowed or rejected.

ADVERSE MINERAL CLAIMS

10. *Numbering and noting on general schedule.*—An adverse mineral claim must be given current number when filed, and not the same serial number as assigned to the mineral application involved. On the general Schedule of Serial Numbers, opposite report of the separate number assigned to an adverse claim, always note in the remarks column "Adv. to (giving serial number of the mineral application involved)." Such notation must also appear, under the separate number involved, on each paper pertaining to an adverse claim. If the mineral application involved is filed during the same month as the adverse claim, note "See Adv. (giving serial number)" in the remarks column, opposite report of the serial number of the mineral application.

MINERAL APPLICATIONS

11. *General Land Office to be notified.*—*Immediately* upon filing and acting upon a mineral application, you will notify the General Land Office on Form 4–024b, and *immediately* upon the filing of an adverse claim against a mineral application, you will notify the General Land Office on Form 4–024a.

12. *To be forwarded with monthly returns.*—Mineral applications against which no adverse claims are filed within the statutory period of publication will be forwarded to the General Land Office with your monthly returns for the month in which such publication ended.

13. *Must be held certain period.*—Mineral applications against which adverse claims are filed within the statutory period will be held until the expiration of the period of publication, and for 30 days after the last adverse claim is filed, and then forwarded to the General Land Office, together with the adverse papers, with your first monthly returns thereafter.

ASSIGNMENTS [f]

14. *How to number and note on general schedule.*—If all the land embraced in a desert-land or a reclamation homestead entry is assigned, the serial number of the entry will not be changed. If a part of the land is assigned, the first paper filed in connection with the partial assignment will be given current number. After a partial assignment, if the remainder of the original entry is assigned, the first paper filed in connection with the assignment of the remainder of the original entry will take the same number as given

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[f] See Circular No. 960, p. 930.

to the original entry, and not a separate number, because such assignment would be a total assignment of all the land that remained in the original entry. When reporting on the general schedule of serial numbers the separate number given to a partial assignment of a desert-land or reclamation homestead entry, always note in the remarks column "Par. assmnt. (giving serial number of the original entry)." Such notation must also appear, under the separate serial number involved, on all application and entry papers pertaining to a partial assignment.

ISOLATED TRACTS

15. *How to number applications and sales, etc.*—An application for sale of isolated tract is, of course, to be given current serial number when filed. Should the land involved, or part thereof, be purchased by the original applicant, the final papers which issue in connection therewith should take the same number as the original application. Should the land, or part thereof, be purchased by a bidder other than the applicant, the final papers which issue to him should be given current serial number, and not the same number as the original application, but there should be noted on each certificate which issues under the original application to any other person than the original applicant, in the upper right-hand corner, under the separate serial number assigned to such final papers, "Sold under (giving serial number of the original application)." This reference must also be shown in the remarks column of the general Schedule of Serial Numbers, opposite report of the separate number assigned to such final papers, in the remarks column of the classified "Schedule of Final Certificates Issued," required under paragraph 44, and upon the receipt which issues to such purchaser.

16. *Numbering additional and second entries.*—Appliccations to make additional and second homestead entries must be given current numbers, and not the same serial numbers given to the applications for the original entries.

SOLDIERS' ADDITIONAL HOMESTEAD APPLICATIONS

17. *Numbering and action to be taken.*—Where an application to locate soldiers' additional rights under sections 2306 and 2307, Revised Statutes, is held for rejection by the General Land Office, and the applicant accepts the holding and files a substitute soldier's additional right, such substitute right should be accompanied by a formal application (Form 4–008a) duly executed. As the substitution amounts to a waiver of all rights under the rejected application, the substituted right should be given a new serial number. Publication and posting must be made as required by the circular of February 21, 1908 (36 L. D. 278), and a copy of the notice of publication must be forwarded to the Chief of Field Division for his indorsement in accordance with the circular of April 24, 1907 (35 L. D. 681), except in Alaska, where publication and posting must be made in accordance with section 10, act of May 14, 1898 (30 Stat. 409), and instructions of January 13, 1904 (32 L. D. 424–38–42), and Circular No. 197 (41 L. D. 356). The above covers cases in which the entire right has been held to be invalid, and has no bearing whatever on the so-called "combination" cases. Where a part of a combination

of rights is held to be invalid and new rights substituted therefor, a formal application (Form 4–008a) should not be filed, and a new serial number should not be assigned. Applications to locate soldiers' additional rights, whether certified or uncertified, must in no instance be considered by registers and receivers for allowance, but must be transmitted with the returns for the month in which filed. Publication and posting should be started within 20 days from the date of filing, and when completed should be transmitted by separate letter and not with the monthly returns. The register must date and sign his certificate to such applications. In every case the applicant must be designated as assignee of the soldier, or soldiers, and care observed to give the soldier's full name. Fees and commissions in connection with soldiers' additional applications are not required to be tendered at the time of filing. If tendered the receiver must, of course, issue receipts therefor.

No such application should be received by the district officers unless accompanied by evidence of the right, or by a reference to the case by land office serial number and description of the land, containing such evidence.

CAREY ACT

18. *How to number and act upon applications filed.*—Each application under the Carey Act must be given a separate serial number, notwithstanding that the same tracts may successively be included in the three kinds of such applications, viz: 1. An application for temporary withdrawal. 2. A segregation list. 3. A list for patent. All three classes must be transmitted by separate letters during the month, and not with the monthly returns. A list for patent shall be transmitted as soon as noted on the local records without holding for publication and without reference to the Chief of Field Division. When reporting applications under the Carey Act on the general Schedule of Serial Numbers, always distinguish between applications for temporary withdrawal, segregation lists, and lists for patent, and note the dates of transmittal in the remarks column. All subsequent papers filed in any Carey Act case will be transmitted special without holding for the monthly returns.

19. *Applications under act of August 11, 1916.*—An application filed by an irrigation district under the act of August 11, 1916 (39 Stat. 506), will be given a separate serial number and will be transmitted by separate letter during the month, and not with the monthly returns and in the general Schedule of Serial Numbers the date of transmittal will be noted in the remarks column. All subsequent papers filed will be transmitted special without holding for the monthly returns.

RIGHTS OF WAY

20. *How to number.*—Each railway map or plat for right of way, whether for a portion of the line of road or for station grounds, must be assigned a separate serial number. An amended map must also be given a separate number and not the same number assigned to the original right-of-way application to which it is an amendment.

21. *Must be forwarded special.*—Upon the filing of an application for right of way on or over the public lands the local officers will not hold such application for transmittal with the monthly returns, but

at once make proper notations upon their records and transmit it to the General Land Office by special letter.

RESERVOIR SITES AND CANAL LOCATIONS

22. *How to number.*—Each application for reservoir site or canal location must be given a separate serial number. An application for an amended reservoir site or an amended canal location should be given the same number as the original application, for the reason that such application is generally based on the same water-right and other data, which accompanies the original application and is filed therewith. In this connection it should be noted that a right-of-way application for the irrigation system for a project under the Carey Act or of an irrigation district, must be given a separate serial number and not the same number given to the application under the Carey Act or the act of August 11, 1916.

AMENDED ENTRIES AND SELECTIONS

23. *Retain original numbers.*—Applications to amend entries and selections will take the same serial numbers as given the original entries or selections.

RAILROAD AND STATE SELECTIONS

24. *Do not hold when publication is required.*—All railroad and State selection lists in which publication is required should not be retained in the local office pending publication, but should be forwarded with the returns at the end of the month when filed and accepted; the publication, when received, to be transmitted by special letter.

25. *When to number pending applications, etc., made prior to July 1, 1908.*—Any declaratory statements, applications, selections, entries, etc., made before July 1, 1908, and which may be still pending, if not given serial numbers, will retain the numbers given them under the system of numbering in use prior to July 1, 1908, UNTIL the first letter, paper, or action of any kind or character is received or taken by YOU in connection therewith, when you will IMMEDIATELY give the case, as it were, a current serial number. When reporting the serial number on the general Schedule of Serial Numbers assigned to an application, entry, etc., which bore a number under the system of numbering in use prior to July 1, 1908, always refer to such old number in the remarks column.

REPAYMENT APPLICATIONS

26. *Filed in connection with entries, etc., made prior to July 1, 1908.*—If an application for repayment should be filed in connection with an application, entry, etc., made before July 1, 1908, which has not been given a serial number, or you receive any letter from this office or elsewhere, or take action of any kind or character in connection with such application for repayment, you should assign current serial number to the application or entry involved. When reporting the serial number on the general Schedule of Serial Numbers, always refer in the remarks column to the number, if any, involved under the system of numbering in use prior to July 1, 1908.

REINSTATED AND AMENDED ENTRIES

27. *Canceled and patented under system used prior to July 1, 1908.*—Should an application to reinstate a canceled entry or to amend a patented entry be filed, and the entry involved has not been given a new serial number, but was canceled or patented under the series of numbering in use prior to July 1, 1908, current number should be assigned thereto. Observe care to refer in the remarks column of the general schedule to the old number involved.

NEW SERIAL NUMBERS

28. *Notations to be made on records.*—When giving an application, entry, proof, etc., which was made prior to July 1, 1908, a new serial number, make notation, on the proper record book which was kept prior to July 1, 1908, of the new serial number given it. It is advisable to make similar notation of the new serial number on the tract books at the same time it is made on the old numerical record, such as the homestead, desert land, and cash registers. It is not necessary to copy the entire old record in the Serial Number Register, but the kind, name and address, description of the land, and all future notations (except a contest record) in regard thereto must be entered in the Serial Number Register. Such notations as are required to be made in the tract books will continue to be made there, as well as in the Serial Number Register. All that is necessary to note on the old record books is the new serial number, as "0567," the "0" signifying that it is the new number. The date it is given that number is determined from the Serial Number Register, which bears the date of the first notation made under the new number.

OLD AND NEW NUMBERS

29. *To be shown in all notices in connection with entries, etc., made prior to July 1, 1908.*—In all notices to be served, posted, or published in connection with applications, entries, etc., made prior to July 1, 1908, you MUST include both the old and the new numbers, as follows: "Homestead entry, No. 4137 (serial No. 056)." All notices served, posted, or published, and all notations made in connection with any declaration, application, entry, proof, etc., filed or initiated on July 1, 1908, or thereafter, will of course refer to only the new serial number which was given the initial paper, as that will be the only number given it for identification. In all notices to be served, posted, or published, the KIND of application, entry, etc., must also appear. In all correspondence with the General Land Office, AFTER the serial numbers have been reported each month, it will be sufficient to identify the case by giving the serial number only. This MUST always be given.

SERIAL NUMBERS NOT TO BE ASSIGNED

30. *To transcripts of records, or plats.*—Requests for transcripts of records, or plats, will not be given serial numbers, because they are not applications or papers applying for the use, segregation, purchase, or disposition of a part of the public domain.

31. *To notices of restoration and applications for survey.*—Notices of restoration of lands to entry and applications for survey of lands must not be assigned serial numbers. Applications to enter such lands, when filed, will of course be given separate serial numbers.

CONTESTS

32.[g] *Not to be given serial numbers.*—Contests must not be given serial numbers. A series of numbers for contests arising in district land offices will be maintained, entirely distinct from the series used for applications, entries, etc., and said contest numbers will not be preceded by "0." The records of contests will be kept in the "Contest Docket" (Form 4–051a). Reference must be made in the contest docket to the serial numbers of the applications or entries involved. Notation should also be made in the Serial Number Register of the initiation and close of a contest, as follows:

July 1, 1912, contest affidavit filed. (See Contest Docket, p. 261.) December 4, 1912, contest closed.

33. *Which papers to be forwarded with returns.*—The only papers pertaining to contests which should be transmitted with the monthly returns are those relating to cases which have abated, been dismissed for want of prosecution (after the time allowed for reinstatement), or withdrawn prior to hearing. Attached to such papers should be a short report which readily reveals the status of the case to which the papers relate. The records of cases in which decisions have been rendered should be transmitted by separate letters, using Form 4–330. If, after the record is transmitted, a relinquishment of the entry is filed, such relinquishment should be immediately transmitted by separate letter, entitled as of the case, and report made as to the disposition, if any, of the land. If a waiver of contestant's preference right is filed with the relinquishment, such waiver should be forwarded therewith. The serial number of the relinquishment must be reported on the classified "Schedule of relinquishments," required under paragraph 44, for the month transmitted, with date of transmittal in the remarks column. Rejected contest affidavits, if appealed, should be transmitted by special letters and the serial numbers thereof reported on the classified "Schedule of rejected and closed cases," required under paragraph 44, for the month when transmitted, with dates of transmittal in the remarks column.

SERIAL NUMBER REGISTER

34. *Complete record required.*—A record, in consecutive, numerical order of all declarations, applications, entries, purchases of land, selections, locations, etc., will be kept in the Serial Number Register (Form 4–051), and all notations in regard thereto, except a contest record thereof, will be made in the Serial Number Register under the proper number. Such notations as are required to be made in the tract books will continue to be made there, as well as in the Serial Number Register. When application or entry papers are transmitted to the General Land Office, such fact must be noted in

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[g] See Circular No. 769, p. 1104.

the Serial Number Register, each notation showing the date of transmittal and whether with the monthly returns or by special letter.

35. *Notations to be made therein.*—Notations of all letters received from, or written to the General Land Office or elsewhere, all papers filed or issued, and all actions taken (except in a contest record), which relate in any manner to an application, entry, selection, proof, etc., will be made in the Serial Number Register under the number given to the application, proof, etc., to which it relates. This notation should always include the date, and be as brief as possible—merely sufficient to identify the letter, paper, or action.

ALPHABETICAL INDEX

36. The alphabetical index will be a card index. A separate card must be made for each person and must contain the name and address and the number and kind of the application, entry, etc., as follows:

Crawford, Samuel H.,
148 Pine Street,
The Dalles, Oregon.
05 Hd.

37. *Same card for all entries, etc., by same person.*—The same card should be used to note the number and kind of all applications, entries, etc., made by the same person, as follows:

Crawford, Samuel H.,
148 Pine Street,
The Dalles, Oregon.
05 Hd.
0467 T. and S.

38. *When to be made where papers were filed prior to July 1, 1908.*—Cards will be made for all applicants, entrymen, purchasers, selectors, etc., whose papers were filed prior to July 1, 1908, WHEN their cases are given new serial numbers. The alphabetical index must be kept from day to day and the cards properly filed each day.

RECORD RIBBONS

39. Record ribbons should always be used when preparing schedules and abstracts herein required.

GENERAL SCHEDULE

40.[11] *How to prepare.*—Registers will submit, in duplicate, with monthly returns (on Form 4–115) a General Schedule of Serial Numbers, listing in numerical order all numbers assigned during the month shown at the top of such schedule, without regard to whether the application and entry papers involved are forwarded to the General Land Office. When applications, etc., are necessarily held, proper notation should be made in the remarks column, as "Suspended, held;" "Rejected, held;" etc. If transmitted with the returns for the month for which the schedule is rendered, notation of such transmittal must not be made. The date of filing in each instance must be shown in the first column.

41.[12] *How to report additional homesteads.*—When reporting the serial number of an application for additional homestead entry on the General Schedule of Serial Numbers, always refer in the remarks column to the serial number of the original entry involved, as "See orig. (giving number)."

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[11] See amendment, p. 134.

[12] See amendment, p. 134.

SCHEDULE OF ALLOWANCES

42.[13] *How to prepare.*—Registers will also submit, with the returns each month, a "Schedule of Allowances" (Form 4–115d), reporting in numerical order and without regard to class all applications, declarations, selections, locations, original and final entries, etc., which are allowed, and private and public sales held, upon which final certificates have issued during the month shown at the top of the schedule. In the first column note the day of allowance of each application, declaration, original entry, etc., or issuance of final certificate in connection with each entry or sale. The second column is for the report of serial numbers. The Receipt Number column must show the numbers of all receipts issued in connection with the allowance of each application, etc. Where yearly installments are required and separate receipts issue for such payments, do not report the numbers of the receipts or the amounts involved. In the column "Kind of application, etc.," always show class of each application, etc., and the date or dates of acts of Congress under which authorized. *Do not use ditto marks in this column.* Use more than one line if necessary. Use the "Remarks" column only for letter references, explanatory remarks, cross references for originals and additionals, etc. Do not use this column for notation of acts. Distinguish between original, additional, stock-raising, commuted, and final homestead entries; original, second, and final desert-land entries, etc., and between indemnity school land selections and selections in satisfaction of grants in quantity for specific purposes (normal schools, etc.). Area and amount involved must in each instance be shown in the respective columns provided therefor, except entries perfected by residence under the desert-land relief act of March 4, 1915, and timber and stone applications reported same month with the final entry. Circular 471 directs the proper manner of reporting entries completed in the manner required of a homestead entryman. Timber and stone applications will be reported month the final proof is submitted and under date fee is applied. In all such cases where final certificates issue same month the $10 fee is earned, do not report area in connection with the applications. Soldiers' additional homestead applications should not be reported on this schedule. Upon issuanace of final certificate in connection with applications of this character report thereof, designated as "Sol. addl. (final)," should appear on the schedule, showing area, and in one item the total of the fee, original and final commissions. Do not report final or commuted proofs or sales hereon unless final certificates issue in connection therewith, or applications, etc., unless allowed during the month. In other words, this schedule must include all applications, adverse mineral claims, declarations, entries, etc., allowed during the month, whether the papers pertaining thereto are held in the district land office, transmitted with the returns for the month, or have been forwarded by special letters.

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[13] See amendment, p. 134.

All application and entry papers must be transmitted with the monthly returns, unless specific authorization is given to forward special. When transmitted by special letters (such as Carey Act segregation lists), report thereof should, of course, be made, with the necessary data as to dates of allowance, etc., and dates of special transmittal. Upon the amendment of an entry by this office, where additional fee and commissions, or commissions, are required, the amended entry must be reported on this schedule under date such money is applied, designated by kind and act or acts of Congress involved. If additional area is also involved the same must be shown. The totals of amended entries, segregated by kind and act or acts must be shown in separate items of the " Summary." Additional payments required by this office must also be shown on this schedule, designated as " Addl. payt." showing kind of entry, act or acts involved and additional area, if any, etc., as above directed for amended entries. In each instance when reporting amended entries and additional payments, show only the area affected by amendment or involved in the additional payment. At the bottom of this schedule there must appear a summary showing the total of each class of applications, entries, etc., allowed during the month, together with the area and amount involved. The body of this schedule must be totaled as to number of applications, entries, etc., area and amount. The items in the " Summary " must also be totaled as to number, area and amount, which totals must of course agree with the grand totals of the items reported in the body of the schedule.

All moneys earned in connection with the allowance of an application, entry, etc., except excess purchase money and cancellation fees in the case of originals, and interest payments and testimony fees in connection with finals, must be shown on this schedule. Purchase money must always be listed separately from fees and commissions.

43.[14] Clerks who prepare schedules of serial numbers and schedules of allowances must place their initials in the upper left-hand corner thereof.

CLASSIFIED SCHEDULES

44.[15] Separate classified schedules of serial numbers are required, in duplicate, covering in numerical order the following classes of papers:

(*a*) Rejected applications, proofs, etc. (on Form 4–115), which are appealed or unappealed; withdrawn or otherwise closed applications, etc.; notices of intention to make proof where proof is not made within the time prescribed; withdrawn and closed contest cases, etc. When a withdrawn application, etc., and withdrawal thereof are transmitted during the same month, such papers should be assembled together, and notation made in the remarks column "Withdrawn." If a withdrawal alone is transmitted, the application, etc., involved having been previously forwarded, observe care to note "withdrawal" in the remarks column when reporting such withdrawal on the schedule. That is, the column Kind of Application or Entry must show the kind, and the Remarks Column must specifically show the status of the paper transmitted.

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[14] See amendment, p. 134.

[15] See amendment, p. 134.

(*b*) Desert-land yearly proofs (on Form 4–115). Distinguish between first, second, and third year.

(*c*) Applications for sale of isolated tracts, showing names of applicants (on Form 4–115). If an application is not returned by the Chief of Field Division in time to be forwarded with the returns for the month during which filed, note "To C. F. D. (giving date)" in the Remarks Column of the general Schedule of Serial Numbers and forward a report on Form 4–030 with your returns for that month, observing care to show all the information called for by the form.

(*d*) Relinquishments (on Form 4–115) including, in numerical order, all classes of applications, entries, etc., on the same schedule showing names of entrymen in the remarks column. Partial relinquishments must be so designated. Should a withdrawal in the form of a relinquishment be filed in connection with an application, etc., which has not been allowed, notation must be made upon the paper that the same is intended as a withdrawal. Withdrawals must not be included hereon, but reported on the classified schedule of Rejected and Closed Cases (*a*).

(*e*) Indian allotment applications, fourth section, act February 8, 1887 (24 Stat. 388), as amended (on Form 4–115).

(*f*) Right-of-way applications (on Form 4–115), showing names of corporations or individual applicants and dates of special transmittal.

(*g*) Applications to amend entries (on Form 4–115).

(*h*)[16] Proofs protested by Forest Service and Chief of Field Division (on Form 4–115). In the remarks column distinguish between protests by forest and field service.

(*i*) Final certificates issued (on Form 4–115) including, in numerical order, all classes of entries, on the same schedule.

45.[17] *Proper dates to be shown in first columns.*—The date shown in the first column of the above classified schedules of serial numbers, required under paragraph 44, except (*i*) must, in each instance, be the date the paper reported thereon was filed in the district land office. The date in the first column of (*i*) to be the date of issuance of the certificate. Observe care to show in the first column of (*a*) date of the last action taken or paper filed; also instructions contained in paragraph 47 when preparing this schedule.

46. *Papers to be reported.*—Items must not be reported on the above classified schedules of serial numbers, required under paragraph 44, unless the papers pertaining thereto are transmitted with the monthly returns, or have been forwarded special during the month. When transmitted special the date of transmittal must always be noted in the remarks column.

47.[18] *Rejected applications, etc., should in certain instances be reported on more than one schedule.*—Whenever a rejected application, etc., is transmitted for which a separate classified schedule of serial numbers is required always report such application on the separate schedule provided therefor, with notation "Rejected," as well as on the classified schedule of rejected and closed cases; that is, a rejected application for sale of isolated tract, when transmitted, must be reported on the classified schedule of applications for sale of isolated tracts, and on the classified schedule of rejected and closed cases, etc.

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[16] See amendment, p. 134. [17] See amendment, p. 134. [18] See amendment, p. 134.

48.[19] *Serials to be reported in numerical order, except on schedule furnished foresters.*—Serial numbers must be reported on all schedules in numerical order, except the classified schedule reporting change of status of entries within National Forests, required under paragraph 52. On the classified schedules of serial numbers, when reporting papers transmitted in connection with an original homestead entry and on an additional thereto, after report of the original entry note "See add'l (giving number)," and report the serial number of the additional entry, *in its numerical order*, with notation "See orig. (giving number)."

49.[20] *How to arrange schedules.*—The original schedules of serial numbers must be arranged in the order listed in paragraphs 40, 42, and 44; the duplicates must be arranged in similar order separately from the originals. The blank spaces at the top of each sheet of the schedules must have the name of the land office and the month and year inserted. Each sheet of the classified schedules (required under paragraph 44) must be properly designated at the top, as "Rejected and closed cases," "Desert Land Yearly Proofs," "Applications for sale of isolated tracts," etc.

50.[21] *Numbers must not be abbreviated; sheets to be numbered.*—Do not abbreviate serial and receipt numbers on abstracts and schedules of serial numbers. If a schedule or abstract consists of more than one sheet the sheets must be numbered at the bottom.

51.[22] *Schedules to be sent to C. F. D.*—At the same time the returns are forwarded to this office, each month, you will transmit to the Chief of Field Division copies of the classified schedules of rejected and closed cases and relinquishments.

DISTRICT FORESTERS

52.[23] [24] *Schedule to be furnished.*—A classified Schedule of Serial Numbers (on Form 4–115), reporting in chronological order all applications, final certificates, relinquishments, and cancellations of entries within the limits of National Forests must be forwarded direct each month to The District Foresters. Such schedule should not be furnished the General Land Office, or the Forester, Forest Service, Washington, D. C. On request the district foresters should be furnished the status of unperfected entries as may be called for by them on forms to accompany their requests. When any excessive amount of data is required by the Forest Service, that bureau will detail a clerk to obtain the information and relieve the local land office of any burdensome requirement. Prompt attention should be given to all requests from The District Foresters.

CERTAIN PAPERS TO BE TRANSMITTED SPECIAL

53.[25] The following, for which separate classified Schedules of Serial Numbers are not required, must be transmitted special during the month, and not with the returns:

(*a*) Entrymen's elections under circular March 25, 1909 (37 L. D. 528).

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[19] See amendment, p. 134.

[20] See amendment, p. 134.

[21] See amendment, p. 134.

[22] See amendment, p. 134.

[23] See amendment, p. 134.

[24] See Circulars Nos. 410, p. 1005, and 417, p. 1006.

[25] See amendment, p. 134.

(*b*) Suspended cases of special nature, concerning the action on which the local officers are in doubt, which may be submitted to the General Land Office for consideration. There must be attached to each case so transmitted a note of explanation briefly setting forth the facts. The date of transmittal must be noted opposite report of the serial number involved in each instance on the classified Schedule of Serial Numbers, if a classified schedule is provided; or, if the application, etc., involved was assigned its serial number during the month when the paper is transmitted, the date of transmittal must be noted in the remarks column of the general Schedule of Serial Numbers.

(*c*) Applications to contest and protests against State, railroad, forest reserve, and individual claimant's selections.

(*d*) Copy of each application to contest allowed by the local officers with the words "For G. L. O. files" plainly written in the margin.

54. *Letters, reports, etc., must not accompany accounts and returns.*—Letters relating to accounts and returns must always be sent separately from the accounts and returns, in order that they may receive prompt attention and not become lost or overlooked among the entry or other papers. Additional evidence, reports, etc., called for by the General Land Office must be transmitted by special letters when received in the district land office, and proper notation made on your records. Care must be observed to give the serial number of the application or entry involved in all such special transmittal of evidence and reports. With every such special transmittal, either a formal letter report, provided in particular cases, or, in special instances, a short letter report should accompany the same.

TIMBER AND STONE APPLICATIONS

55. *Method of transmitting and reporting.*—One copy of each timber and stone application must be transmitted with the returns for the month during which the same is accepted, with the status plainly shown thereon. The other copy should be forwarded to the Chief of Field Division for appraisal, after complete notation on the Serial Number Register, which will suffice for the record thereof until return of the appraisement made by the Chief of Field Division, with which appraisement the duplicate copy should be retransmitted to the district land office and acted on in accordance with the regulations of November 30, 1908, as revised January 2, 1914. Where applicants to purchase under the timber and stone law fail to make proof and payment within the time provided therefor under the law and regulations, there should be forwarded to the General Land Office, with the returns for the month within which the time for making payment or filing of proof expires, all papers relating to the application, with a short letter report attached thereto of the fact that no proof or payment has been made thereon, observing paragraph 63. Notation should be made on the Serial Number Register and on the Tract Book "(date) payment not made, closed," or "(date) no proof filed, closed." On the Serial Number Register should appear the additional notation "all papers forwarded to G. L. O. (date of transmittal and month's returns)." A line should be drawn through the notation on the plats. The serial number of the closed timber and

stone application must be reported on the classified Schedule of Rejected and Closed Cases, for the month transmitted, with notation in the remarks column "Payment not made, closed," or "No proof filed. closed." Upon suspension or rejection of a timber and stone application, both copies thereof should be retained in the district land office during the period allowed for perfection of same or for appeal. If appeal is filed or the application is finally rejected, both copies should be transmitted with the returns for the month during which appealed or finally rejected.

NOTICE OF ALLOWANCE

56. *Must be given promptly.*—Every applicant and entryman shall be given prompt and due notice of the allowance of an application, entry, proof, etc., as required by circular of August 7, 1908 (37 L. D. 60). In the case of original applications, there is a form letter provided (Form 4–279) which must be immediately delivered or mailed to the applicant upon the allowance of the application in order that there may be no justifiable excuse for failure to comply with the law as to the establishing of residence, etc. The receipt issued is not in any case to be treated as a notice of allowance of the application, entry, proof, etc. In the case of a final entry, the notice of allowance is a duplicate of the register's certificate, which duplicate copy must be plainly marked across its face "Duplicate."

FINAL CERTIFICATES

57. *Must show all receipt numbers.*—Final certificates in connection with all entries must show the numbers of all receipts issued in connection with the entries beginning with the receipt in connection with the original application to enter, in the upper right-hand corner, in numerical order. These numbers can readily be obtained from the Serial Number Register, which, of course, should show the numbers of all receipts issued in connection with an entry.

58. *One certificate covering two or more applications or proofs.*—In the case of an original and additional homestead entry by the same person on which one final proof covers both entries, separate final certificates must not be issued. One final certificate should be issued, showing thereon both serial numbers, with the abbreviations "Orig." and "Addl." after the respective numbers. Likewise, in cases where an applicant for an isolated tract sale purchases noncontiguous tracts, the sale of which was made under one application, one certificate should issue covering all the tracts purchased by the same person, showing thereon the same serial number as the application, if the applicant is the purchaser. If purchased by one other than the applicant, current number should be given the certificate as directed by paragraph 15.

REJECTED APPLICATIONS, ETC.

59. *Final disposition must be noted.*—Rejected applications, proofs, etc., must be held for appeal, and transmitted to the General Land Office with the returns for the month during which the appeal is filed, or for the month in which the time allowed for appeal expires.

There must be attached to each rejected application, proof, etc., a "rejection slip" (Form 4–659), or copy of notice of rejection, *and the final disposition must be plainly noted on such rejection slip, or copy of notice of rejection, before the papers are transmitted with the monthly returns.*

RELINQUISHMENTS

60. *Notations by register.*—The register will note on each relinquishment, over his signature, the day and hour of its receipt, and will write the words "Canceled by relinquishment" (giving date) opposite the record of the entry in the serial number register and tract book and draw a line through the notation on the township plat. Whenever a relinquishment is filed on any other form except the relinquishment blank (Form 4–621) the register will immediately attach such instrument to the regular blank form either by staples or paste, preferably the latter, in order to enable persons handling same to readily recognize nature of the paper.

ENTRY PAPERS AND ABSTRACTS

61. *Must not be folded.*—All application and entry papers and all abstracts and accounts, with the monthly returns, must be transmitted FLAT, not folded.

ENTRY PAPERS

62. *Must not be transmitted with accounts.*—Application or entry papers, with the monthly returns, must be transmitted FLAT, in a separate package or packages from the receiver's accounts. Where the returns consist of more than one package, registers will note on each package the number of packages transmitted, and the number of each particular package, as "5 packages, No. 2." Such information will enable this office to determine without examining the returns when same have been received complete. The name of the local office should, of course, be shown on all envelopes and packages forwarded. The general Schedule of Serial Numbers and the classified schedules of serial numbers must accompany the application or entry papers. Observe care to arrange such schedules as directed in paragraph 49.

63. *Must be fastened together at the top.*—All papers belonging to the same application, entry, proof, etc., EXCEPT THE CARBON COPIES OF RECEIPTS, sent with your monthly returns, must be fastened together with the stapling machine provided therefor. (Adjust guide on machine so that the papers will be fastened not more than one-fourth inch from the top.) All papers must be fastened at the top, in the center. Do not use more than one staple.

ARRANGEMENT OF PAPERS

64. *Must be arranged numerically.*—Arrange all applications and entry papers submitted with your monthly returns numerically, without regard to the kind or class of application or entry. There is no objection to arranging leaves of absence under the acts of June 6, 1912, and December 20, 1917 (farm labor), in separate packages with your returns.

65. Arrange the papers in each case according to their dates, with the latest dated, or issued, paper on the top. Arrange papers with the top and left edges even.

NOTATIONS ON PAPERS

66. *Exact time of receipt must be shown.*—Application and entry papers should not be briefed. The date and hour of receipt of ALL papers must be noted in the upper RIGHT-hand corner. Observe instructions contained in circular 512.

67. *Serial, receipt, and old numbers.*—The serial and receipt numbers must always appear on the upper RIGHT-hand corner of EACH application or entry paper. If a number under the series of numbering in use prior to July 1, 1908, is involved, such old number and KIND of application or entry must be noted under the serial number, as "HE 3926," "DLE 4630," etc.

68. *Acts of Congress and area.*—The date, or dates, of any acts under which an application, entry, etc., is made must be noted on such papers, together with the area embraced thereby. Type and type holders have been furnished the local offices for this purpose.

69. Additional entries should always bear the notation of the serial number of the original entry in the space provided therefor on the application blank.

70. *Moneys earned to be shown on papers.*—Receivers have been furnished hand stamps for stamping on papers the amount of money "earned" in connection therewith. This notation should be made in the upper LEFT-hand corner of the paper. It is of utmost importance that the stamp should be used in all cases and that the amounts be accurately noted, as the triplicate abstracts have been dispensed with and the receipts are forwarded to the Auditor for the Interior Department with the accounts of receivers.

71. *Dates moneys are applied to be shown on papers.*—Excepting only the initial and any intermediate payments which may be shown on final certificates, you will indicate on all applications, selections, etc., and final certificates immediately beneath or following the receipt number, or numbers, shown thereon, date the amounts represented by them were *applied.* This notation may be made either by pencil or band dater. Original fees, commissions, first payments, etc., and final commissions, coal-land purchase money, etc., must, of course, be applied upon allowance of applications and issuance of final certificates, respectively.

RECEIVERS' ACCOUNTS

72.[26] *Forms of remittances.*—Receivers of public moneys may accept cash, currency, and certified checks when drawn in favor of the receiver on national and State banks and trust companies located in the same city as the depository with which the deposits are to be made, and such "out of town" certified checks as can be cashed by them without cost to the Government. United States postal money orders may be received and accounted for as cash when they are made payable to the order of the receiver by the post office where they are issued and drawn on the post office where the receiver is located.

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[26] See amendment, p. 140.

Receivers must not accept, or issue receipts for, remittances tendered in any other form. (Treasury Cir. No. 11, Mar. 27, 1913.)

RECEIPTS

73. *Form of.*—Receivers of public moneys will use form of receipt blank, Form 4–131, for all moneys collected by them, and for all certificates of deposit on account of surveys, military bounty land warrants, certificates of location, etc., which, under any act of Congress, may be received as cash in payment for lands. When the warrants or certificates of location are not tendered as cash receivers will issue receipt only for the fees paid in connection with the "locating" thereof.

74. *When to issue.*—Receivers must issue receipts for the full amount of money tendered *at the time* the money is tendered and must not have any money in their custody or control *beyond the day of its receipt* for which receipts have not issued.

75. *Significance of.*—The issuance of a receipt by a receiver of public moneys does not mean that the application, entry, proof, etc., in connection with which it is issued, is allowed or approved, or will be allowed or approved. It merely means that the receiver has received the money and that it is in his custody or control until it is applied or returned.

76. *How to issue.*—Receipts must be issued in consecutive numerical order. Each receiver must use the lowest numbered receipt furnished him first. Receipts must always show the serial number of any application, entry, etc., in connection with which they are issued, and the area, price, etc.

77. *Alterations not to be made.*—Any receipt that needs correction before delivery, or is mutilated or spoiled in any manner, should be marked plainly across its face "Canceled," and be placed in proper numerical order with the copies of receipts transmitted with the receiver's accounts and another receipt issued. After delivery, where receipts are returned to receivers or recalled by them for correction, the receiver will indorse the correction across the face of the receipt and certify to same.

78. *Allowances not to be indicated.*—The word "Entry" must never appear upon receipts; the words "Application," "Proof," etc., should be used. Receipts must not indicate the action taken on the paper in connection with which issued, due notice of which will be given. (See 37 L. D. 60.)

79. *Carbon copies.*—The carbon copy of the receipt must show the signature of the receiver, preferably in carbon, as evidence that both original and copy were signed simultaneously. The original will be delivered to the payor. Carbon copies of receipts must be transmitted monthly in consecutive numerical order, with the lowest numbered receipt on top, with the receiver's accounts.

80. *Receipt for coal lands.*—A memorandum copy of each receipt issued in connection with coal-land declaratory statements, applications, and entries must be forwarded direct to the Director of the Geological Survey, which memorandum shall be prepared by means of carbon paper on a blank sheet at the time the original receipt is prepared. The description of the land involved should be shown

on the copy furnished the Geological Survey, which must contain all data and insertions of the original receipt, including the receipt number.

DISPOSITION OF MONEYS

81. *Deposit to official credit.*—Receivers must deposit all moneys received to their official credit as "Trust funds—Unearned moneys" and forward copies of certificates of deposit, Form 6599, to the General Land Office.

82. *Surplus amounts.*—Surplus amounts in excess of legal requirements should, in the event that final action can not be taken immediately upon the paper in connection with which tendered, be returned with a notice of the action taken; otherwise surplus amounts should be retained by the receiver as "trust funds" (which will hereafter be alluded to as "Unearned moneys") until final action on the paper is had.

83. *Expenses of depositing public moneys.*—Registers and receivers making shipments by express of moneys to their depositaries should see that the express receipts or waybills indicate the amount of each kind of money contained in each package shipped. If this information is not stated on the express receipt or waybill, forming a subvoucher to the express voucher, the amount must be shown on the voucher of the express company where receivers make payment for such shipments.

84.[27] *When to deposit.*—Treasury regulations require receivers of public moneys living in the same city or town with the Treasurer or Assistant Treasurer of the United States, a Federal reserve bank, or a national bank depositary, to deposit their receipts at the close of each day to the credit of the Treasurer of the United States. Officers at such a distance from a depositary that daily deposits are impracticable must forward their receipts as often as they amount to $500, and at the end of each month without regard to the amount then accumulated. (Treasury Circular No. 105a, 1917.)

UNEARNED MONEYS

85.[28] The following class of money may be held by receivers of public moneys with unapproved applications, proofs, etc., as "unearned moneys" and returned:

(*a*) The five and ten dollar payment and commissions, together with any excess purchase money tendered in connection with homestead applications.

(*b*) Final commissions tendered in connection with homestead proofs.

(*c*) Commuted homestead purchase money.

(*d*) Surplus amounts tendered in excess of legal requirements.

(*e*) Contest testimony fees.

(*f*) Testimony fees in connection with desert land final proofs, when the testimony is not reduced to writing in the local land office.

(*g*) Moneys received for transcripts of records and plats when the condition of the local land office will not permit of the work being done therein and the applicant desires the work done by others.

(*h*) Railroad and State selection fees.

(*i*) Moneys tendered under any special act of Congress, or decision or regulation of the department, which specifically provides for the return of such moneys by the receiver in the event of rejection or disallowance of the paper in connection with which tendered.

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[27] See modification, p. 133.

[28] See amendment, p. 154.

(*j*) Money tendered with applications where the land applied for is not subject to entry.

(*k*) Moneys tendered with applications which show on their face that the applicant is not entitled to make entry.

(*l*) Timber and stone purchase moneys tendered in advance of submission of proof.

(*m*) Purchase moneys tendered with desert land applications.

(*n*) Moneys tendered with any application to make entry or proof where a withdrawal as a transmission line is made under the act of June 25, 1910 (36 Stat. 847), and the land withdrawn is to be excluded from the patent pending computation in the General Land Office of the area for which deduction of fee, commissions, or purchase price (if any) is to be made.

(*o*) Fees tendered with timber and stone applications, to be returned to the applicant where, for any reason other than fraud, the sworn statement is rejected prior to the submission of proof. Upon the submission of proof the fee together with the purchase money tendered will be applied.

(*p*) Coal-land purchase money tendered prior to completion of proof as permitted in paragraph 18, Circular 557. Such payments must, of course, be applied upon issuance of final certificate.

(*q*) Moneys tendered with applications for amendment, pending receipt of notice from this office of allowance or rejection of same, when they should be earned or returned.

(*r*) Purchase moneys tendered with applications, pending allowance or rejection of same, when they should be earned or returned.

86. *How to apply and earn moneys.*—All moneys will be applied by the receiver, drawing his official check therefor in favor of the Treasurer of the United States against his account of "Unearned moneys." The disposition of all moneys will be evidenced by the official checks of receivers, and they must note on all checks the numbers of the receipts and serial numbers which issued for the money covered thereby. Checks so drawn should be deposited to the credit of the Treasurer of the United States on account of the particular fund for which drawn, and in the event that any receiver's designated depositary will not accept checks so drawn the General Land Office should be immediately advised and the matter will be taken up with the Treasury Department for appropriate instructions to the depositary.

OFFICIAL RECORDS OF RECEIVERS OF PUBLIC MONEYS

87. *For moneys received and deposited to official credit.*—The receiver will use Form 4–103, making notations as indicated by the column headings of this form. No space is provided for the addresses of parties, and in those cases where such addresses are not to be found on the Serial Number Registers, for example, where moneys are tendered in connection with requests for plats, the address should be noted on Form 4–103, using a separate line therefor. Receivers must observe especial care in noting the date and disposition of moneys on this form in the column entitled "Date applied or returned," using "A" or "R" as appropriate. The receiver may use a separate line of this form for surplus amounts or for any portion of the amount received that is to be applied separately from the remaining portion. Testimony fees should always be entered on a separate line. Certificates of deposit, Form 6599, should be noted on Form 4–103 in proper chronological order, immediately under the receipts covered thereby. Accounts should not be held in the local

office beyond the period allowed by law awaiting receipt of certificates of deposit, but forwarded promptly to this office and the amount reported as in transit but not covered by certificate of deposit.

88. *For moneys returned or applied.*—Receivers will use for their records as to the disposition of moneys Forms 4–103a, 4–103b, and 4–103f. As these forms do not have any space for the name of the depositor great care must be observed to note the correct receipt and serial number, if the latter be involved.

89. *For moneys deposited with Treasurer.*—The receiver will make notations on Form 4–106, "Abstract of Treasury deposits," of all certificates of deposit issued to him, as indicated by the column headings of the abstract.

90. *Filing.*—One binder should be maintained for Form 4–103, and one binder for Forms 4–103a, 4–103b, 4–103f, and 4–106. In this way the receiver will have one record book showing all moneys received and another record book showing the disposition of such moneys.

91. *Return of moneys.*—Moneys must be returned by the official check of the receiver and in no other manner, with notation on such check showing receipt and serial numbers involved.

92. The receiver must hold moneys as unearned until the period for appeal has expired, unless waiver of appeal is filed. If an appeal is taken, the money must be held as unearned until the same is disposed of, when, according to the final action taken, the money should be applied or returned. Observe in this connection paragraph 85.

93. *Checks not to issue less than 50 cents.*—Following the ruling in 2 L. D., 200, that excess payments less than $1 will not be insisted upon, and for the administrative reason that the return of small amounts by the official checks of receivers has tended to increase the amount of outstanding checks—as checks for a few cents are frequently never cashed—receivers will not issue official checks for the return of an amount less than 50 cents. In all transactions where the amounts are tendered over the counter, the receiver will, of course, make change and issue receipts for the amount of money retained by them. The small surplus should be earned with the balance of the remittance.

ACCOUNTS OF RECEIVERS OF PUBLIC MONEYS

94.[h] *Annual outstanding list of unearned items.*—Receivers at land offices located in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, and Montana will prepare, in triplicate, on the typewriter, an itemized list on Form 4–103 of all "Unearned moneys," that were in their custody or control at the close of business on March 31 of each year. Receivers at land offices located in Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming will prepare a similar list at the close of business on September 30 of each year. All copies of this list must be forwarded to the General

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[h] See amendment, p. 164.

Land Office with the receiver's accounts for the months of March or September of each year, as the case may be. One copy of this list, after verification in the General Land Office, will be returned to the receiver.

95. *When to apply moneys.*—When an item is to be applied, it must be reported upon the proper abstract of moneys returned or applied, as indicated by the column heading thereof. The date reported on the abstract of moneys returned or applied must be the date the money is applied or returned, and should coincide with the date of the certificate of allowance, if any.

96. *Forms to be used.*—Receivers must render the following monthly, in duplicate, showing the month and year at bottom of each page, which should be numbered:

(*a*) 4–103. "Abstract of moneys received."

(*b*) 4–103a. "Abstract of moneys returned or applied." On this abstract must be reported chronologically, as "Returned" or "Applied," the following:

All items returned by the official check of the receiver, the check number to be inserted in the column indicated.

All payments to contest clerks, with number of voucher therefor; the oath on the reverse of this abstract should be executed by the receiver when payments to contest clerks are reported thereon, which should also show that the words have been counted and found correct.

All moneys credited the United States, as homestead fees, homestead commissions (both original and final), and commissions and other fees from whatever source.

All moneys credited the United States as "Sales of public lands."

Checks drawn for moneys earned should be properly shown in column provided therefor.

(*c*) 4–103b. "Abstract of moneys applied." This abstract will be used only in those offices where moneys from sales of town sites or Indian lands are received. The date of the act involved should be inserted in the blank space at the heading of the columns provided therefor, together with the name of the town site or reservation, using a separate column for each town site or reservation.

(*d*) 4–103f. "Abstracts of moneys applied or paid to appraisers." This abstract will be used for reporting moneys credited the United States on account of sales of Government property, and for payment to appraisers for reappraisement of timber and stone lands under the instructions of November 30, 1908 (37 L. D. 294), with the voucher number therefor inserted in the column indicated.

(*e*) 4–106. "Abstract of Treasury deposits." (See par. 88.)

(*f*) 4–106a. "Abstract of certificates of deposits on account of surveys, etc."

(*g*) 4–104a. "Receiver's account current." This form is to be used for both the monthly and quarterly "account current." A monthly "account current" for each of the first two months only in a quarter is required. A quarterly "account current" covering all three months of a quarter, to be rendered in duplicate, is required. Monthly "accounts current" should not be rendered in duplicate.

97. *How to state accounts.*—Form 4–103 should first be prepared from the record copy of the same, and its total carried to the credit side of the "account current" (Form 4–104a) on the line of "Collections as shown by abstracts," in the column "Trust funds—Unearned moneys."

98. Form 4–103a should then be prepared from the record copy of this abstract. The total of the column "Returned to depositors" should be carried to the debit side of the "account current" (Form 4–104a) on the line "Returned to depositors as shown by abstracts," in the column "Trust funds—Unearned moneys." The total of the

column " Fees and commissions," including the subcolumns " Homestead fees," " Cancellation fees," and " Commissions and other fees " should be carried to the credit side of the "Account current " on the line "Applied as shown by abstracts," in the column " Fees and commissions." The total of the column " Sales of public lands " should be carried to the " account current " on the line "Applied as shown by abstracts," in the column " Sales of public lands."

99. The total of each column of Form 4–103b should be carried to the credit side of the " account current " on the line "Applied as shown by abstracts," in the columns of the " account current " corresponding to the columns of the abstract.

100.[29] A copy of Form 4–106 will be mailed by the receiver to the Director of the Reclamation Service. The totals of the columns of this abstract will be carried to the debit side of the " account current," on the line " Treasury deposits as shown by abstracts," and distributed through the various columns of the " account current," corresponding to the columns of the "Abstract of Treasury deposits." Cash in transit to depository on the last day of a quarter must be included in the balance on hand and shown in the analysis of balance on the face of the " account current." Credit therefor should be claimed in the month and quarter shown by the date of the certificate of deposit covering such cash.

101. Form 4–106a will be used for reporting the papers indicated thereon received as cash and will be carried to the debit side of the " account current " on the line " Military bounty land warrants, scrip, certificates of location, etc., received as cash, as shown by abstracts," distributed over the various columns of the " account current " according to the purpose for which the paper was received as cash, and the fund to which, if cash had been received, the same would have been deposited. This abstract performs the same functions as the "Abstract of Treasury deposits," Form 4–106, in enabling the receiver to obtain credit for items debited to himself on the various abstracts of moneys and the various abstracts where the cash equivalent of such papers was reported as cash.

102. *Recapitulations.*—Add to the totals of columns on the last page of an abstract for the last month of each quarter the totals of the columns of the corresponding abstract for the two previous months of the quarter.

103. *Account current.*—The preparation of the " account current " (Form 4–104a) has been explained in the preceding paragraphs, except as to line "Applied, as shown by abstracts," on the debit side. This line should show in the column " Trust funds—Unearned moneys " the amount shown in the total column on the corresponding line of the credit side of the " account current." Receivers, in every case, must sign the certificate on the face of the " account current," and also the first indorsement thereon. The register, in every case, must sign the certificate on the "account current " as to the examination of moneys in the hands of the receiver. As to the rendition of accounts current, see Comptroller's Decisions, vol. 19, page 103.

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[29] See modification, p. 125.

TRANSMITTAL OF ACCOUNTS

104. Monthly accounts must be mailed within 10 days after the date of the expiration of the period for which rendered.

Quarterly and other accounts must be mailed within 20 days after the expiration of the period for which rendered. When accounts are not rendered within the statutory period (28 Stat. 209), an explanation of the cause of delinquency must be furnished in order that proper steps may be taken with the Treasury Department to have the bar to advances of funds waived.

105. All papers constituting receiver's accounts must be transmitted flat—not folded—and arranged in the following order:

(*a*) Copies of receipts.
(*b*) "Abstract of moneys received." (Form 4–103.)
(*c*) "Abstract of moneys returned or applied." (Form 4–103a.)
(*d*) "Abstract of moneys applied." (Form 4–103b.)
(*e*) "Abstract of moneys applied or paid to appraisers." (Form 4–103f.)
(*f*) "Abstract of Treasury deposits." (Form 4–106.)
(*g*) "Abstract of military bounty land warrants, etc." (Form 4–106a.)
(*h*) "Receiver's account current." (Form 4–104a.)

Arrange the duplicate forms in like manner.

HOW TO FIND BALANCE OF UNEARNED MONEYS

106. *Monthly accounts.*—(1) Total the "Abstract of moneys received" (Form 4–103), which would be the aggregate amount of money received for the month or other period for which rendered. (2) Add to this total the balance brought forward from the preceding month. (3) Deduct from this total (*a*) the total amount of moneys returned during the month, (*b*) the total amount paid contest clerk during the month, (*c*) the total amount paid to appraisers during the month, (*d*) the total amount deposited to the credit of the Treasurer of the United States during the month, (*e*) the amount paid register and receiver in abatement of receipts when authorized.

The difference thus ascertained will be the total balance with which the receiver is chargeable. The total amount on deposit with his designated depository or depositories, together with the cash on hand in office safe, may exceed this balance. Therefore the aggregate amount of all outstanding checks should be deducted therefrom. This difference should equal the amount of the receiver's true balance.

107. *Quarterly accounts.*—Follow the same procedure as set forth with reference to monthly accounts, except that the balance brought forward should be that on hand at the end of the last month of the prior quarter, and the totals will be for the entire quarter.

108. *How to determine whether amount of cash on hand in office safe is correct.*—Strike a balance as directed in paragraph relating to monthly accounts, including receipts for the current day; deduct from this total all deposits of "unearned moneys."

COMPENSATION OF REGISTERS AND RECEIVERS

109.[30] Registers and receivers are allowed a salary of $500 a year without regard to the character or amount of work done by them (sec.

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[30] See Circular No. 1152, p. 154.

2237, Revised Statutes), except in Alaska. In addition to this salary they are entitled, under section 2238, Revised Statutes, and other laws, to commissions on moneys received at the receiver's office and to certain fees for specific services rendered by them.

Sec. 2240, Revised Statutes, provides:

> The compensation of registers and receivers, including salary, fees, and commissions, shall in no case exceed in the aggregate $3,000 a year each; and no register or receiver shall receive for any one quarter or fractional quarter more than a pro rata allowance of such maximum.

The term "year" as used in this section relates to the fiscal year beginning July 1 and ending June 30. (Sweet *v.* United States, 34 Ct. Cl. 377; 3 Comp. Dec. 606.)

Section 2241, Revised Statutes, provides that compensation received in any land office in excess of the maximum allowed by law to the register and receiver shall be paid into the Treasury as other public moneys.

Under the decision of the Comptroller of the Treasury dated June 18, 1915, registers and receivers are each entitled to 1 per cent commissions on cash sales of Indian land (unless such commissions are designated or restricted by the act of Congress authorizing the sales), not to exceed the maximum compensation provided by section 2240, Revised Statutes.

In computing the compensation of the local land officers the following order will be observed:

(*a*) Salary.
(*b*) Cancellation fees (earned by the register only).
(*c*) 1 per cent each on sales of public land.
(*d*) 1 per cent each on sales of Indian land.
(*e*) Commissions and other fees.

The excess of the maximum earnings of any month within a fiscal year may be applied to minimum of earnings of any month within the same fiscal year, but the excess of maximum earnings of one fiscal year must not be applied to the minimum earnings of another year.

The excess of earnings of one appointment must not be applied to the minimum earnings of another appointment, even though it be of the same officer, and within the same fiscal year. (13 Comp. Dec. 313.)

Ex-officio registers and receivers at Fairbanks and Nome, Alaska, are allowed only such fees and commissions as are provided by law, not to exceed $1,500, as their maximum earnings, whereas registers and receivers of other land districts except Juneau, Alaska, where a salary of $1,500 per annum is allowed, are allowed a maximum of $2,500 on account of fees and commissions.

110. *Vacancy in office.*—A vacancy in the office of register or receiver disqualifies the remaining incumbent from taking official action upon papers requiring the joint action of said officers until the vacancy has been filled and the new officer enters upon his duties. (9 L. D. 365; 12 L. D. 297; 14 L. D. 133; 20 L. D. 276; and 22 L. D. 704.)

FEES AND COMMISSIONS

111. In Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming the following

fees and commissions are chargeable by law, to be collected by registers and receivers and which enter into the computation of their compensation, except the homestead fee.

112. *Declaratory statements.*—

Preemption declaratory statement	$3.00
Soldiers and sailors' homestead declaratory statement	3.00
Coal land declaratory statement	3.00
Reservoir declaratory statement (act of Jan. 13, 1897)	3.00

Declaratory statement fees are earned irrespective of the action taken upon the declaratory statement.

113. *Mineral applications and adverse claims.*—

For filing and acting upon each application for a patent	$10.00
For filing and acting upon each adverse claim	10.00

Fees in connection with mineral land applications and adverse claims are earned irrespective of the action taken on the application or adverse claim. Coal applications must be accompanied by a fee of $10, as they are held to be "mineral applications" by comptroller's decision of July 25, 1911. (Appeal No. 20295.)

114. *Timber and stone applications.*—

For filing and acting upon each application to purchase timber and stone lands	$10.00

See Circular No. 576.

115. *Homestead applications.*—

For 160 acres, at $1.25 per acre:		
Fee	$10.00	
Commissions	6.00	
		$16.00
For 80 acres, at $1.25 per acre:		
Fee	5.00	
Commissions	3.00	
		8.00
For 40 acres, at $1.25 per acre:		
Fee	5.00	
Commissions	1.50	
		6.50
For 160 acres, at $2.50 per acre:		
Fee	10.00	
Commissions	12.00	
		22.00
For 80 acres, at $2.50 per acre:		
Fee	5.00	
Commissions	6.00	
		11.00
For 40 acres, at $2.50 per acre:		
Fee	5.00	
Commissions	3.00	
		8.00

Fees and commissions in connection with homestead applications are not earned unless the application is allowed.

NOTE.—A fee of $10, with proper commissions, will be collected in connection with homestead applications where the area involved is 81 acres or more. (See Circular Nov. 14, 1914, 43 L. D. 449.) Proper commissions, original and final, are based upon the area involved unless restricted by special act of Congress.

116. *Final homestead commissions.*—

For 160 acres, at $1.25 per acre	$6.00
For 80 acres, at $1.25 per acre	3.00
For 40 acres, at $1.25 per acre	1.50
For 160 acres, at $2.50 per acre	12.00
For 80 acres, at $2.50 per acre	6.00
For 40 acres, at $2.50 per acre	3.00

NOTE.—The commissions must be tendered with the homestead proof, together with testimony fees at 22½ cents per 100 words. The commissions are not earned unless the proof is approved.

117. *Military bounty land warrants.*—

For locating a 160-acre warrant	$4.00
For locating a 120-acre warrant	3.00
For locating a 80-acre warrant	2.00
For locating a 60-acre warrant	1.50
For locating a 40-acre warrant	1.00

The moneys are earned irrespective of the action taken.

No fees are chargeable on warrants issued prior to February 11, 1847.

Revolutionary bounty-land scrip is received and accounted for as cash, and no fee is chargeable to parties presenting such scrip.

Receipts must issue for the military bounty land warrant tendered, indicating thereon the cash value of same and the date of issuance of warrant, number thereon, serial number of case involved, act of Congress under which issued, name of party to whom issued, last assignee, area of land granted under the warrant, and the description of the land and the area thereon for which the warrant is accepted in payment. The receipts should show as a separate item any cash that may be tendered with the warrant.

The warrant should be accounted for on Form 4–103 as a separate item with a full description thereon, as shown by the receipt.

If the item is "earned" it should be accounted for on Form 4–103a under the heading of "Sales of public lands," and in the place of the check number should be set forth "M. B. L. W. No. ———," accounted for on Form 4–106a in accordance with the instructions contained in Circular 304 and debited the United States in the account current under "Sales of public lands" on the line of military bounty land warrant, scrip, and certificates of location received as cash, as shown by abstracts.

Before returning a warrant to the applicant the receiver should first obtain a receipt therefor, which should set forth the same data as that indicated at the time of tender, and file same with the Form 4–103a, in which the item is set forth in the "Returned to the depositor" column as "M. B. L. W. No. ———, see voucher." The warrant must not be set forth on the abstract of certificates of deposits for earned moneys deposited to the credit of the Treasurer of the United States.

118. *Porterfield warrants* (act of Apr. 11, 1860).—For locating these warrants the same fees are chargeable as are allowed for military bounty land warrants. The moneys are earned irrespective of the action taken.

119. *Sales of public lands.*—The commissions of registers and receivers on cash sales of the public lands are paid by the United States, and no fees or commissions on such sales are chargeable to the purchasers, except in cases of homestead entries on ceded Indian reservations affected by the act of May 17, 1900 (31 Stat. 179), and commuted under the provisions of the act of January 26, 1901 (31 Stat. 740), in which cases the entryman is required to pay a commission of 2 per cent on the cash price of the land (31 L. D. 106). In cases of timber sales in Alaska, the Comptroller of the Treasury has held that the sale of timber is a sale of lands and that the register

and receiver are entitled to 1 per cent each commissions on sales of such timber. In cases of sales of Indian lands appropriate instructions will be given as to the collection of commissions, and when the commissions are collected from the entryman, in addition to the purchase price for the Indian lands, the commissions are not earned unless the proof is approved, although the purchase money in many instances may be earned irrespective of the action taken upon the proof.

120. *State selections.*—

For each final location of 160 acres (or fraction thereof) under any grant of Congress to States (except for agricultural colleges)	$2.00

No fees are chargeable on State swamp-land selections, but a fee of $2 is to be collected on each location of 160 acres, or fraction thereof, made with swamp-land indemnity certificates.

NOTE.—(*a*) This money is not earned unless the selection is approved. For method of computing State selection fees see paragraph No. 121.

(*b*) The enabling act (36 Stat. p. 557) provides that the fees to be paid to the register and receiver in the States of Arizona and New Mexico for each final location or selection of 160 acres made thereunder shall be $1.

121. *Railroad selections.*—

For each final location of 160 acres (or fraction thereof) by railroad or other corporations	$2.00

In computing the amount of fees payable on a list of State or railroad selections, the receiver will divide the total area by 160; the quotient will be the number of 160-acre selections on which a fee of $2 each is chargeable. Should the quotient consist of a fraction over a whole number, the legal fee of $2 will be collected for such fraction.

NOTE.—The moneys are not earned unless the selection is approved.

122. *Agricultural college scrip.*—

For each piece of agricultural college scrip located	$4.00

NOTE.—This money is earned irrespective of the action taken.

123. *Private land scrip, Valentine scrip.*—

For each piece of scrip filed on unsurveyed lands	$1.00
For each location of scrip	1.00

NOTE.—The moneys are earned irrespective of the action taken.

124. *Supreme Court scrip.*—No fees or commissions are allowed on the location of Supreme Court scrip, nor on the location of Indian scrip, or other private land scrip, except as specifically provided for by law.

125. *Reducing testimony to writing.*—Fees for reducing testimony to writing are allowed at the rate of 22½ cents for each 100 words, in the following cases:

(1) Making final proof in preemption cases when the writing is done in the local land office.

(2) Making final proof in commuted and noncommuted homestead and timber culture cases, irrespective of the fact whether or not the writing is done in the local land office, as the fees are allowed for "examining and approving the proof."

(3) In establishing claims to mineral lands. However, at present there is no proof in mineral lands which would be reduced to writing in the local land office and entitling the collection of testimony fees. (Sec. 12, act May 10, 1872.)

(4) In establishing claims to timber and stone lands, when the testimony is reduced to writing in the local office.

(5)[31] In hearings before registers and receivers in contest cases.

Registers and receivers of the United States land offices will employ clerks for reducing testimony to writing in contest cases when such clerical assistance is required in their offices. No specific authorization for the employment of such clerks will be required, nor will such clerks be required to file an oath of office. However, these clerks must attach a certificate, signed by them, to the testimony transcribed in each case, to the effect that such testimony is a true and literal transcription of the verbatim report taken at the hearing. Clerks employed for this work should be qualified as competent stenographers and typewriters and must furnish their own supplies.

The compensation to be paid such clerks will be not to exceed 15 cents per 100 words in the following States, where the amount to be collected from the contesting parties is 22½ cents per folio: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

The compensation to be paid such clerks will be not to exceed 10 cents per 100 words in the following States, where the amount to be collected from the contesting parties is 15 cents per folio: Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin.

Contest clerks are allowed 5 cents a page for copies of testimony furnished either party. (38 L. D. 615.)

When the reducing to writing, in a contest case, is done by regularly appointed employees of local land offices, the total amount received must be deposited to the credit of the Treasurer of the United States.

No compensation will be allowed contest clerks for docketing. Docketing of contest cases and all other notations on the contest docket will be done by the registers or receivers or by the regular salaried employees of the local land offices.

The estimated cost of reducing to writing all the testimony to be taken before the register and receiver in a contest case shall be collected in advance from the contesting parties on the date of the hearing before the hearing has begun, or, under rule 57 of Practice, the party liable thereto may be required to give security in advance of the trial by deposit in a reasonable sum or sums, for payment of the cost of transcribing the testimony. Receipts (Form 4–131) will issue for the amounts collected and must show the number of words and the rate per hundred. If any additional amounts above the estimated cost are collected, additional receipts will issue therefor and the amounts deposited to the official credit of the receiver as hereinafter directed. Moneys so receipted for will be deposited to the official credit of the receiver of public moneys as "Unearned moneys" and so held until the complete record in the case, in connection with which deposited, has been transcribed and filed in the local land office, and payment will then be made to the contest clerk, after securing proper voucher therefor, and the net balance, exclusive of such payment, deposited to the credit of the Treasurer of the United States, and any excess amount returned to the proper parties.

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[31] See Circular No. 904, p. 136.

Report will then be made of such collections and expenditures on Form 4–103 and Form 4–103a. (See par. 53 et seq. of Rules of Practice.)

(6) In making final proof on desert-land claims, when the testimony is reduced to writing in the local land offices. (See 36 L. D. 481.)

In computing the fees for reducing testimony to writing, only the words actually written must be charged for and no charge should be made for the printed words. (See pars. 10, 11, and 12, sec. 2238, U. S. Rev. Stats.) The words written must be counted and the charge made in accordance with the result of such count. Registers and receivers must not have a uniform fee of a specific sum in every case of the same class of proofs.

126. *Transcripts from records*.—Registers and receivers are entitled to charge at the rate of 10 cents per 100 words for making transcripts of their records for individuals. (Act of Congress of Mar. 22, 1904.)

A transcript is a literal copy of the words, letters, and figures which make the record. The correctness of the transcript may or may not be certified to, but it is nevertheless a transcript.

Registers and receivers of consolidated land districts only are entitled to charge, for furnishing any other record information, such fees as are properly authorized by the tariff existing in the local courts of their district.

Record information is held to be any official statement of the facts appearing of record, a certificate, and for which they are entitled to charge the fee as above authorized.

In the absence of the State fee bill, providing for such fee, registers and receivers will be entitled to charge the fee allowed clerks of courts for furnishing certificates of their records, and in the receipt for the amounts so collected will cite the section and page of the State statute or other authority for such charge.

While it may often be desirable for any register and receiver to furnish record information, there is no authority for others than officers of consolidated land districts to collect a fee therefor.

The fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute, and are not subject to discretionary action on the part of officials.

Consolidated districts are those districts into which one or more previously existing districts have been merged.[1]

(See Cir. 315, dated Apr. 24, 1914, 43 L. D. 226.)

127. *Plats and diagrams.*—Under the second section of the act of March 3, 1883, authorizing a charge to be made for plats, diagrams, etc., the fees for the same are hereby fixed as follows:

For a diagram showing entries only	$1.00
For a township plat showing entries, names of claimants, and character of entry	2.00
For a township plat showing entries, names of claimants, character of entry, and number	3.00
For a township plat showing entries, names of claimants, character of entry, number and date of filing or entry, together with topography, etc	4.00

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[1] The instructions contained in Circular No. 315 have been substantially restated in paragraph 126, supra. Circular No. 315 has been omitted from this publication.

The plat or diagram must be of standard size (Form 4–590b), and it must be a correct and complete delineation of the particular township. There is no legal authority under said statute for registers and receivers to furnish a plat of a section or subdivision, or any other fraction of a township, and to charge or receive therefor a proportionate part of the authorized fee.

128. *Lists for taxation purposes.*—For lists of lands sold, which are construed to mean lists of final certificates furnished State or Territorial authorities for the purposes of taxation, 10 cents per entry. The receipts must show number of final entries and rate per entry.

129. *Cancellation fees.*—

For giving notice to contestants of the cancellation of any homestead, preemption, or timber-culture entry	$1.00

This fee must be tendered to the receiver before any application of the successful contestant for the lands involved will be approved. The register only is entitled to the compensation on account of cancellation fees, which must be reported in a separate column of abstract. (Form 4–103a.)

130. In Alabama, Arkansas, Florida, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin, the following fees and commissions are chargeable by law to be collected by registers and receivers, and which enter into the computation of their compensation, except the homestead fee.

131. *Declaratory statements.*—

Preemption declaratory statement	$2.00
Soldiers' and sailors' homestead declaratory statement	2.00
Coal land declaratory statement	2.00
Reservoir declaratory statement (act Jan. 13, 1897)	2.00

Declaratory statement fees are earned irrespective of the action taken upon the declaratory statement.

132. *Mineral applications and adverse claims.*—

For filing and acting upon each application for a patent	$10.00
For filing and acting upon each adverse claim	10.00

Fees in connection with mineral land applications and adverse claims are earned irrespective of the action taken on the application or adverse claim.

For coal applications see paragraph No. 113.

133. *Timber and stone applications.*—

For filing and acting upon each application to purchase timber and stone lands	$10.00

134. *Homestead applications.*—

For 160 acres, at $1.25 per acre:		
Fee	$10.00	
Commissions	4.00	
		$14.00
For 80 acres, at $1.25 per acre:		
Fee	5.00	
Commissions	2.00	
		7.00
For 40 acres, at $1.25 per acre:		
Fee	5.00	
Commissions	1.00	
		6.00

For 160 acres, at $2.50 per acre:		
Fee	$10.00	
Commissions	8.00	
		$18.00
For 80 acres, at $2.50 per acre:		
Fee	5.00	
Commissions	4.00	
		9.00
For 40 acres, at $2.50 per acre:		
Fee	5.00	
Commissions	2.00	
		7.00

Fees and commissions in connection with homestead applications are not earned unless application is allowed.

See note to paragraph 115.

135. *Final homestead commissions.*—

For 160 acres, at $1.25 per acre	$4.00
For 80 acres, at $1.25 per acre	2.00
For 40 acres, at $1.25 per acre	1.00
For 160 acres, at $2.50 per acre	8.00
For 80 acres, at $2.50 per acre	4.00
For 40 acres, at $2.50 per acre	2.00

NOTE.—These commissions must be tendered with the homestead proof, together with testimony fees at 15 cents per hundred words. The commissions are not earned unless the proof is approved.

136. *Military bounty land warrants.*—

For locating a 160-acre warrant	$4.00
For locating a 120-acre warrant	3.00
For locating a 80-acre warrant	2.00
For locating a 60-acre warrant	1.50
For locating a 40-acre warrant	1.00

See paragraph 117.

137. *Porterfield warrants* (*act of April 11, 1860*).—For locating these warrants the same fees are chargeable as are allowed for military bounty land warrants. The moneys are earned irrespective of the action taken.

138. *State selections.*—

For each final location of 160 acres (or fraction thereof) under any grant of Congress to States (except for agricultural colleges)	$2.00

No fees are chargeable on State swamp-land selections, but a fee of $2 is to be collected on each location of 160 acres or fraction thereof made with swamp-land indemnity certificates. (See par. 139.)

NOTE.—This money is not earned unless the selection is approved. (See par. 120.)

139. *Railroad and other selections.*—

For each final location of 160 acres (or fraction thereof) by railroad or other corporations	$2.00

See paragraph 121.

140. *Agricultural college scrip.*—

For each piece of agricultural college scrip located	$4.00

NOTE.—This money is earned irrespective of the action taken.

141. *Private land scrip, Valentine scrip.*—

For each piece of scrip filed on unsurveyed lands	$1.00
For each location of scrip	1.00

NOTE.—The moneys are earned irrespective of the action taken.

142. *Supreme Court scrip.*—No fees or commissions are allowed on the location of Supreme Court scrip nor on the location of Indian scrip or other private land scrip, except as specifically provided for by law.

143. *Reducing testimony to writing.*—Fees for reducing testimony to writing are allowed at the rate of 15 cents per 100 words. (See par. 125.)

144. *Transcripts from records.*—Registers and receivers are entitled to charge at the rate of 10 cents per 100 words for making transcripts of their records for individuals. (See par. 126.)

145. *Plats and diagrams.*—(See par. 127.)

146. *Lists for taxation purposes.*—(See par. 128.)

147. *Cancellation fees.*—(See par. 129.)

148. *Soldiers' additional homesteads.*—The fees and commissions with soldiers' additional homestead applications will be computed in the same manner as are ordinary homestead fees and commissions. The original fee and commissions and final commissions will be collected together at the same time, and must be applied before certificate issues.

149. *Penalty for improper fees.*—No fees, commissions, or rewards are required or allowed to be paid at United States land offices for extra services of any character whatever; and registers and receivers are absolutely prohibited by law from charging or receiving, directly or indirectly, any fee or compensation not expressly authorized by law, or for any services not imposed upon them by law, or a greater fee or compensation in any case than specifically allowed by law. Officers charging or receiving illegal fees, compensations, or gratuity are subject to *summary dismissal from office*, in addition to the penalties provided in title "Crimes," chapter "Official misconduct," United States Revised Statutes. Illegal fees received by clerks, employees, or agents are received by the land officers within the meaning and prohibitions of the law, and registers and receivers will be held personally and officially responsible therefor.

CHECKS

150.[32] *Checks returned unclaimed.*—Where checks issued by receivers for return of unearned moneys have been returned as unclaimed they should be retained in the possession of the receiver, to be delivered to the payee when applied for. After the expiration of five years from the date the moneys covered thereby were originally received by the receiver, such checks should be transmitted with the return of outstanding checks (hereinafter provided for), in which they are included, to this office, which will forward them to the Secretary of the Treasury, who will place the amounts thereof to the credit of the appropriation "Outstanding liabilities" and the personal credit of the payee, as provided by the act of March 2, 1907. (See 34 Stat. 1245.)

151. *Outstanding checks—Return required.*—Receivers of public moneys should not deposit to the credit of the Treasurer of the

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[32] See Circular No. 1157, p. 156.

United States on account of "Outstanding liabilities" the amount of unearned moneys on hand for five years or more that are represented by checks issued by them for the refund of such moneys to applicants which remain outstanding, but they should make a return, in duplicate, of such checks to this office at the end of each quarter and they will be forwarded to the Secretary of the Treasury.

152. *Outstanding checks—Return when receiver retires.*—Whenever any receiver of public moneys shall cease to act in that capacity, he should at once inform the Secretary of the Treasury what checks, if any, drawn by him are still outstanding and unpaid. If the checks are in his possession, he should transmit them to this office with a schedule thereof, in duplicate, for reference to the Auditor for the Interior Department for file with his schedule to await claim of payees for delivery to them.

153. *Outstanding checks—Amounts to be determined.*—As it is necessary for the receiver in order to balance his account to know the amount of outstanding checks, he should carefully examine and compare with his records of checks issued, the monthly statements of paid checks from the Treasurer of the United States, making notations on stubs of checks of the payment or cancellation thereof.

MISCELLANEOUS

154. *Moneys tendered for lands in other districts.*—A tender of money in connection with an application for lands not situate in the receiver's land district must be receipted for by him and the amount thereof deposited as "Unearned moneys" and immediately returned to the party tendering same by the receiver's official check, together with the application with which tendered, after giving the latter current serial number and making proper notations thereof upon the serial register. Due report of the receipt and the return of the money must, of course, be made in the receiver's accounts and of the application thereof in connection with which tendered, upon the "General schedule of serial numbers," with notation in the "Remarks" column. For example, "Application returned, lands in Seattle district."

In returning such moneys the receiver will advise the party remitting same of the reason therefor, and that he may immediately forward his application, together with the check returning his remittance, properly indorsed, to the receiver for the land district in which the lands desired are located. In this connection, however, applicants must be advised by receivers that checks issued by receivers of public moneys will in no case be accepted as a form of remittance in connection with any other application than that of the original remitter, as more than one indorsement on such checks will prohibit their acceptance by receivers of public moneys. If any checks of this character should be forwarded to a receiver in connection with applications for lands in his district, which applications were originally presented to another land office, the receiver will issue receipts therefor and account for the amounts thereof under existing regulations.

155. *Reappraisement of timber and stone lands.*—The money deposited to cover the cost of reappraisement of timberlands under the circular of November 30, 1908, as revised to August 22, 1911, should be retained by the receiver as " Unearned moneys " pending reappraisement. The appraisement will be made by party designated by the chief of field division, and before making payment in accordance with paragraph 24 of said circular the receiver should secure a voucher (Form 4–152), signed by the appraiser, and certified by the chief of field division who employed him. This voucher should be forwarded with memorandum copy thereof with the receiver's "Abstract of moneys applied or paid to appraisers." (Form 4–103f.)

156. *Sales of Government property.*—Moneys received at land offices from proceeds of sales of any property should be deposited as "Unearned moneys," recorded on Forms 4–103 and 4–103f, and received and applied in the same manner as other moneys. Such moneys should be deposited to the credit of the Treasurer of the United States as "Miscellaneous receipts, proceeds of Government property." Certificates issuing therefor must show on the back thereof, in detail, what property was sold and a copy of the letter of the General Land Office authorizing the sale must be furnished and attached to the abstract. (Form 4–103f.)

OUTSTANDING LIABILITIES

157. *Act of March 2, 1907 (34 Stat. 1245).*—At the end of each quarter receivers will prepare, in triplicate, on Form 4–103, an itemized list of all unearned moneys which have been on hand for five years or more, giving thereon the date each item was originally received, the receipt number, if any issued therefor, the name and address of the remitter thereof, and the purposes of its tender, which list shall bear the certificate of the register and receiver that the same is correct; that the amounts are due and payable; that due diligence has been exercised to the return of same; and that the sums specified have remained unclaimed for a period of five years or more. (35 L. D. 568.)

Where amounts appear on receiver's records, and the remitter can not be identified, a separate list upon Form 4–103 shall be made thereof, in triplicate, showing the amount, and, if possible, the date of receipt of each item and whatever other information is available for identification, which list shall bear the certificate of the register and receiver, that after careful investigation the ownership of such moneys could not be determined, and that they have been reported in the unearned account for five years or more.

The total of each list above provided for will be separately deposited to the credit of the Treasurer of the United States as "Outstanding liabilities," lands, act of March 2, 1907 (34 Stat. 1245).

158. *Repayment of outstanding liabilities.*—Application for the return of unearned moneys that have been transferred to the Treasury under the act of March 2, 1907, should be stated by the applicant in the following form:

APPLICATION FOR RETURN OF MONEYS COVERED INTO THE TREASURY AS "OUTSTANDING LIABILITIES"

I, ______________________________ of ______________________________, who made payment of $______, in connection with______________________________
(Kind and number of application, etc.)
_______________, on ___________________, receipt No. ______, hereby make
(Date)
application, in pursuance of section 4 of the act of March 2, 1907 (34 Stat. 1245), for the return of said amount, which has been transferred to the Treasury as "Outstanding liabilities" under said act.

____
(Signature)

United States Land Office at ____________________________
______________________________, 19__.

We hereby certify that it appears from the records in this office that the statements in the foregoing application are correct, and that the amount stated was transferred to the Treasury as "Outstanding liabilities," in pursuance of the act of March 2, 1907, in the accounts of the receiver of public moneys of the United States land office at ____________________________, for the quarter ended ____________________________.

____
Register.

____
Receiver.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ________________, *19*__.

Examined and approved. It appears from the records of this office that the statements in the foregoing application and certificate are correct, and that the amount involved has been deposited in the Treasury in accordance with the act of March 2, 1907.

____
Commissioner.

The register and receiver will certify, as above directed, to the correctness of the account as shown by the records of their office, and forward same to the Commissioner of the General Land Office for administrative examination and transmittal to the Treasury Department for settlement.

BONDS

159. *Receiver's new bonds—Balances.*—As to receiver's accounts, it is required that the receiver transfer to his accounts under his new bond (or to his successor when he has not been reappointed) all moneys which constitute his balance of "unearned moneys" at the close of business on the last day for which he is to render accounts under his old bond. The balance due the United States embraces both "unearned" moneys and "earned" moneys. If the depositary is not in the same town with the receiver, the account should be extended to include the date of the last certificate of deposit, and same should be included in the "Abstract of Treasury deposits."

160. *Rendition of accounts time.*—Final accounts under any bond must be rendered within 20 days from the date preceding the date of the approval of the new bond.

161. *Balance from United States.*—The balance due FROM the United States embraces the balance due to the receiver because of overdeposits, credit differences, etc.

162. *Certificate of deposit.*—All receivers of public moneys must secure SEPARATE certificates of deposit (Form 1A) for moneys or balances deposited as receiver and as special disbursing agent, and the proper funds, appropriations, etc., must appear upon all certificates of deposit. The certificates of deposit must also clearly show that they are moneys or balances deposited "Under bond dated --."

163. *Closing accounts when relinquishing office.*—When relinquishing his office, the receiver will prepare, in TRIPLICATE (Form 4–103), a list of all "unearned moneys" in his possession at the time of relinquishing such office, all copies of which the receiver will forward to the General Land Office with his final accounts. The triplicate copy will, after it has been checked with the records of the General Land Office, be transmitted to his successor. The outgoing receiver should transfer by his official check the amount of such list to his successor as soon as he has been officially notified that his successor has entered on duty and his bonds approved.

164. *Deposits on relinquishing office.*—The receiver of public moneys must deposit to the credit of the Treasurer of the United States on account of various funds—"Sales of public lands," "Fees and commissions," etc.—all moneys which are earned at the time of relinquishing his office, and he should deposit to his official credit, as receiver of public moneys, all "unearned moneys" on hand at that time.

165. *Fractional accounts.*—The receiver must render fractional quarterly account when necessary up to and including his last day in office.

166. *Death of receiver.*—In case of vacancy caused by death of the receiver his final accounts should be prepared and certified to by the register as shown by the records.

(For vacancy in office see 9 L. D. 365; 12 L. D. 297; and 26 Stat. 657.)

167. *Disbursements.*—No payments will be made by the receiver as special disbursing agent of the land office for any salaries or expenses that may have accrued for a fractional month, except semimonthly payments to clerks on the 15th, but he will deposit all balances of moneys advanced him as such officer less outstanding checks to the credit of the Treasurer of the United States on account of the various appropriations from which advanced. Care should be observed that the certificates of deposit issuing for such deposits clearly show the appropriations. Unpaid claims should be forwarded to the General Land Office for settlement.

168. *Entrance on duty and instructions.*—When a receiver is notified that his bonds have been approved he is authorized to receive, when he enters on duty, all "unearned moneys" which the outgoing receiver has been directed to transfer to him by his official check, and which, when received, he must immediately place to his credit as receiver of public moneys as "unearned moneys" with his official designated depositary.

The new receiver must not return or apply any of this money until the list thereof, which his predecessor will forward with his final accounts, has been approved by the General Land Office, when it will be transmitted to him, and he will be duly notified as to its approval or any discrepancies therein and authorized as to the return or application of the amount covered thereby.

The incoming receiver should receipt to the outgoing receiver, in duplicate, for receipt blanks, by numbers, one copy of which should be forwarded with the final accounts of the outgoing receiver.

Special Disbursing Agents

ACCOUNT CONSISTS OF WHAT

169. The account of a disbursing officer consists of a complete, continuous, itemized record of his receipts and disbursements (the latter term being herein used to include expenditures and deposits to personal credit), as shown by his bond, requisitions, abstracts of collections, checks, vouchers, subvouchers, cash receipts, abstracts of expenditures, accounts current, and cash account, which will be considered in the order named, and the account for any specific period should include only such fiscal transactions as are completed within that period, as evidenced by the dates appearing on checks, cash receipts, accountable warrants, and certificates of deposit.

ACCOUNT BEGINS WHEN

170. A disbursing officer's account under any bond must begin from the date of *approval* of such bond by the Secretary, without reference to the date on which funds may be advanced thereunder, except that in cases where a bond given in connection with a particular appointment is approved prior to the date on which such appointment becomes effective, the account should begin on the date the appointment is to take effect.

RECEIPTS

ADVANCES

171. *Authority for.*—Advances of public money to disbursing officers are authorized by section 3648, Revised Statutes.

172. *Conditions precedent.*—Before an advance of public funds can be made to any officer or employee of this bureau he must execute a bond for the careful discharge of his duties and the faithful disbursement of and an honest accounting for all moneys, public funds, and property coming into his hands, and such bonds must be approved by the Secretary of the Interior. And if funds are already in hand under a former bond he must deposit such balance and close his account.

173.[33] *Requisitions.*—When a disbursing officer has filed a proper bond and with it the three cards showing his autograph signature, he may make requisition for an advance of public funds. This requisition must always be made on Form 4–531, must be mailed without other inclosure except in cases where a letter of explanation is necessary, and must show the following facts:

(*a*) The date of the bond under which the advance is requested.

(*b*) The balance under each appropriation on the date the requisition is transmitted.

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[33] See Circular No. 1106, p. 149.

(*c*) The total balance on hand.
(*d*) The amount requested under each appropriation.
(*e*) The total amount requested.

174. *Requisitions, special cases.*—Special disbursing agents who make requisition for funds from the appropriation for "Deposits by individuals for surveying public lands" should show the specific amounts to be used in connection with mineral or agricultural surveys and in connection with railroad surveys, giving the initials of the railroad company in connection with the latter. And whenever the terms of a general appropriation allow the use of not to exceed a maximum named for some specific purpose requisitions for any amounts to be used for the specific purpose must indicate the amount requisitioned for such specific purpose. A failure to enter the balance on hand under each and all appropriations, or to give any other information hereinabove required, will result in a delay in the advance of funds.

175. *Requisitions, funds of other bureaus.*—If requisitions include a request for funds of some other bureau set aside for use by this office, two memorandum copies should be furnished, but if a separate request is made for funds of the other bureau one memorandum copy only is required. Requisitions for Indian moneys should cite the Indian Office authority, as, for example (Land—Allotments, C. E. F., 32191–15, March 26, 1915).

176. *Requisitions made special.*—All requests for funds are made special by this office and are promptly forwarded through the Secretary of the Interior to the Treasury Department for the issuance of warrant.

177. *Notice of advance.*—A copy of the requisition made by this office is in each case forwarded to the disbursing officer as notice to him of the fact that the original of such requisition has been forwarded to the Treasury Department.

178. *Make requisition early.*—As there will necessarily be some delay in view of the large number of requisitions received in the Treasury Department each quarter, disbursing officers should mail their requests in sufficient time to permit of their reaching this office at least 10 days before the funds are needed.

179.[34] *Funds not to exceed bond.*—Funds can not be advanced in excess of the amount of the disbursing officer's bond, and he should in no case make requisition for an amount which, added to the total of the balance on hand from all appropriations, would exceed the amount of his bond.

180. *Appropriation titles.*—Treasury regulations require that the titles of appropriations, as shown in all estimates, disbursements, accounts, and vouchers, shall be exactly as such titles appear on the books of the Treasury. These titles are correctly shown on the memorandum copy of the requisition mailed to the disbursing officer, and he should use such memorandum copy in posting the amounts to the several appropriations, being very careful to credit the United States with amounts under the exact titles as reported to him.

181. *Fiscal year an important part of title.*—The fiscal year is an important part of the title of annual appropriations and should in

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[34] Advances are now made in excess of penalty of bond under authority of Treasury circular No. 195 of 1921.

no case be omitted. Appropriations are ordinarily made for a specific fiscal year, ending in each case with June 30, and the appropriation is available for payment of expenses incurred or services rendered during the fiscal year ending with June 30 of the year shown in the title. For example, "Protecting public lands, timber, etc., 1918," indicates that the appropriation was made for the payment of services rendered or articles purchased in accomplishing the object indicated during the fiscal year beginning July 1, 1917, and ending June 30, 1918.

While the same quantity of supplies may be purchased in June as would under the same needs of the service be purchased in any other month, notwithstanding the fact that such supplies may not all be consumed during that month, no additional quantity should be purchased for the purpose of using an unexpended balance of annual appropriations. (Sec. 3690, R. S.; 6 Comp. Dec. 818; 7 Comp. Dec. 793.)

182. *Fiscal year—When title includes two.*—The use of two years as a part of the title of an appropriation indicates that the appropriation is available from the date of the approval of the act to the end of the succeeding year. For example, the appropriation for "Classification of lands involved in Oregon & California Railroad forfeiture suit, 1917 and 1918," was available from April 17, 1917, the date of the passage of the act, till June 30, 1918.

183. *Check books.*—Requisition in duplicate on Forms 1231 and 1231a for a supply of checks sufficient in each case to last six months should be made on the Secretary of the Treasury, allowing six weeks for printing and delivery in normal times.

184. *Depositary.*—All funds advanced to disbursing officers are placed to their official credit with the Treasurer of the United States, on whom all checks should be drawn and with whom all public funds should be deposited, deposits being made through convenient designated United States depositaries.

185. *Embezzlement.*—Every officer or agent of the United States who deposits, converts, loans, withdraws, transfers, or applies public money in any manner, except as authorized by law, is deemed guilty of embezzlement, and is liable to a heavy fine and imprisonment. (Secs. 5488, 5491, and 5492 Revised Statutes.)

186. *Official credit defined.*—Whenever funds are placed or deposited with the United States Treasurer to the credit of a disbursing officer, and subject to his official check as such, the deposit is said to be to his official credit. Any amount collected or conceded pertaining to a current appropriation should be deposited to official credit (Form 6599) in accordance with section 3620, Revised Statutes, Treasury Circular No. 102, 1906, and Treasury Circular of January 18, 1913. Credit for such deposits should *not* be claimed in the account current.

187. *Personal credit defined.*—Whenever a special disbursing agent deposits an amount to the credit of the Treasurer of the United States on Form 1A, not subject to his official check, the deposit is said to be to personal credit. Any amount collected or conceded pertaining to an appropriation not then current or belonging to "Miscellaneous receipts" should be deposited to personal credit. Certificates of de-

posit for "Miscellaneous receipts, proceeds of Government property," should have indorsed on the back a detailed list of the property sold. Credit for deposits to personal credit only should be claimed in the account current.

COLLECTIONS

188. In addition to the amounts advanced by Treasury warrant, special disbursing agents may occasionally receive funds from other sources, such as for the sale of Government property (collections from which should be deposited to personal credit on account of "Miscellaneous receipts, proceeds of Government property"), refund on mileage or scrip books (which should be deposited to official credit if the appropriation is current, and to personal credit if it is not current, on account of the appropriation from which the books were originally purchased).

189. *Amounts recovered or withheld from carriers.*—Moneys recovered from common carriers, whether in cash or by deduction, for value of lost or damaged property, should be covered into the Treasury as miscellaneous receipts on account of "Proceeds of Government property." (Secs. 3617 and 3618 Revised Statutes; 22 Comp. Dec. 379, 703.)

190. *Expense of sale to be deducted.*—Whenever the sale of Government property is authorized and there is an expense in connection with such sale the expense, supported by proper subvouchers, should be deducted from the gross receipts and the net proceeds only should be deposited to personal credit under "Miscellaneous receipts, proceeds of Government property." The officer conducting the sale or receiving the proceeds thereof should furnish the following certificate:

> I hereby certify that the above statement is true and correct, and represents the actual amount received and expended.

(Treasury Circular 6, Jan. 9, 1897.)

191. *Abstracts of collection.*—For any collection made by a disbursing agent "Abstracts of collection" (Form 4–106b) must be rendered in duplicate, on which should be shown the date of receipt, the name of the party from whom received, the amount, and the appropriation or fund to be credited. Collections from different funds should be kept distinct.

192. *Receipts for office work.*—Moneys received by the United States surveyors general for work to be done in their offices should be accounted for in accordance with Circular No. 483, dated June 29, 1916.

DISBURSEMENTS

EXPENDITURES

193. *Advance decisions by comptroller.*—Section 8 of the act of Congress approved July 31, 1894 (28 Stat. 208), provides:

> Disbursing officers, or the head of any executive department, or other establishment not under any of the executive departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.

All requests for decisions by the comptroller must be submitted through the Secretary of the Interior.

194. *Conditions precedent to.*—The conditions necessary before a disbursing officer may pay any claim are that he shall have filed a bond; that the bond shall have been approved by the Secretary; that he shall have made requisition on this office for an advance of funds; that this office shall have requested the Treasury Department to make such advance; that the necessary amount from the particular appropriation shall have been placed to his official credit with the United States Treasurer; that he shall have knowledge of the funds being so placed; and that a voucher made up in the prescribed form shall have been presented to him for payment. (Secs. 3623 and 3678 Revised Statutes; 4 Comp. Dec. 317, 568; Comp. Dec. Sept. 23, 1908.)

CHECKS

195. *In general.*—Payments should be made by check unless it is impracticable to make payment in that manner; the checks to be numbered in the order in which they are drawn, beginning with No. 1 for the first check and continuing in one series so long as the officer or employee continues as a disbursing officer (checks are numbered when printed in accordance with officer's requisition—Form 1231); each check should bear the date on which it is drawn; should be in favor of the party, by name, to whom the payment is to be made (except when drawn for cash under paragraph 301); should agree in amount with the voucher in payment of which it is drawn; must show on the face or back "the object or purpose to which the avails are to be applied," the purpose being clearly but briefly indicated in some such form as "Pay," "Pay roll," "Purchase of subsistence," "Purchase of supplies," "Pay and expenses," etc.; and must be identified with the voucher upon which it is issued in payment by having noted thereon the number of the voucher. (For outstanding see par. 312.)

196. *Check stubs.*—The title of the appropriation should be noted on the check stub, together with the date, name of payee, and voucher number, but it is not necessary that the appropriation should be shown on the check.

197. *Issuing duplicate checks.*—Immediately upon the loss of a check, the owner, to better protect his interest, should, in writing, notify the office or bank on which it was drawn of the fact of such loss, stating the name of the disbursing officer or agent by whom it was drawn, describing the check—giving, if possible, its date, number, and amount—and requesting that payment of the same be stopped. The disbursing officer or agent who issued the original check should also be notified. The necessary instructions relative to the issuance of duplicate checks (Treasury Circular Form 1343, Apr. 14, 1916) and blank indemnity bond may be obtained on application to this office. (Secs. 3646—as amended and reenacted by acts of Feb. 23, 1909, and Mar. 21, 1916—and 3647, Revised Statutes.)

198. *Spoiled or canceled checks.*—Spoiled or canceled checks should be sent quarterly direct to the auditor for preservation and future reference.

VOUCHERS IN GENERAL

199. *Forms of vouchers.*—A voucher made up in the prescribed form may be a "Voucher for personal services" (Form 4–665a), a "Pay-roll voucher" (Form 4–112), a "Voucher for services and traveling and other expenses" (Form 4–152), a "Voucher for witness's services" (Form 4–665e), a "Voucher where testimony is taken by deposition" (Form 4–665d), or a "Voucher for purchases and services other than personal" (Form 4–665b). These vouchers will be discussed later in the order named.

200. *To be in favor of claimant—Assignments void.*—All vouchers must be stated in the name of the person, company, or corporation rendering the service, and checks drawn by disbursing officers in payment of such vouchers must be in favor of the party, by name, to whom the payment is to be made, and payable "to order," the assignment of claims upon the United States being prohibited by section 3477, Revised Statutes.

201. *To be filled in before signature.*—All vouchers must be completely filled in by the payee, or before signature by the payee, without alteration or erasure at any time; and all vouchers (except vouchers for personal compensation for services rendered under the personal supervision of some administrative officer and so certified by him, and vouchers for services and traveling and other expenses) must be certified by the claimants as correct and just.

202. *Signature to.*—Each voucher must be signed with the full name of the payee and, if signed by an agent, with the full name of his authorized agent, the relation of the agent to his principal being shown in all cases where a voucher is signed by other than the payee. When a voucher is signed in the name of a firm, company, or corporation, the name of the person writing the firm or corporate name, as well as the capacity in which he signs, must appear, and if a signature is made by mark, the mark must be witnessed by a disinterested party.

203. *Certifying officer.*—All vouchers, before payment by a disbursing officer, must be certified to as correct by some administrative officer, such as United States surveyor general, supervisor of surveys, assistant supervisor of surveys, United States surveyor or transitman, register or receiver of United States land office, chief of field division, special agent, mineral examiner, timber cruiser, practical miner, detailed clerk, etc.

204. *Approving officer.*—The commissioner is approving officer for expenditures from any appropriation under his control; surveyors general are approving officers for vouchers covering the salaries and expenses of their several offices; the supervisors of surveys and assistant supervisors are approving officers for vouchers pertaining to surveys in the field, and it is required that all such vouchers shall receive the approval of one of these officers; registers and receivers are approving officers as to the expenses of their own offices, and chiefs of field divisions are the approving officers for the expenditures in their respective divisions. Ordinarily when a voucher would be approved by the same officer that has certified to the service represented thereby his signature on the same voucher as an approving officer is not required. The approval of a voucher by a disbursing officer serves no purpose whatever; they are not approving officers. The

space for approval on vouchers sent to Washington, D. C., for direct settlement must be left blank by the usual approving officers in the field, because such vouchers must be approved by the commissioner or assistant commissioner.

205. *Numbering.*—Vouchers should be numbered in the order in which they are paid, without reference to the character of the voucher, the period of service covered, the appropriation chargeable or whether the voucher is supplemental to one already paid. The first voucher paid by a disbursing officer during a fiscal year will be numbered 1 and the others in numerical order in a single series throughout the fiscal year. The filing of a new bond during the year in no way affects this series of numbers.

206. *Appropriation to be shown on voucher.*—The full and correct title of the appropriation chargeable must be indorsed in the proper place at the top of each voucher and each memorandum copy thereof, and if a voucher is chargeable to two or more appropriations the title of each appropriation must be shown, together with the specific amount chargeable to each appropriation. In the latter event the time chargeable to each or other facts controlling the division between the appropriations must be shown on the voucher or in a statement attached thereto.

VOUCHERS FOR PERSONAL SERVICES

207. *For personal service, including pay rolls.*—A payment to one individual for personal services should be supported by a "Voucher for personal services" (Form 4–665a), and, where several employees are paid at one time, as at the end of the month or at the close of a particular period, a "Pay-roll voucher" (Form 4–112) should be used. Services of the entire office force, or of the field party, for a particular period may be listed on a single "Pay-roll voucher," although chargeable to several appropriations, if the names are grouped according to appropriations. Whichever form of voucher is used it should not cover services in more than one month.

208. *Pay-roll vouchers, etc.—Must show what.*—Vouchers covering personal services must show the name (first name, middle initial, and surname, or first initial, middle name, and surname—John M. Doe or J. Marcus Doe), the dates, inclusive, of service, the rate of compensation, and the amount, and if there are any days excepted from the number included in the dates inclusive of service, the specific days excepted must be shown. Care should be taken that on the first voucher an employee's name (especially field assistants) shall be written fully, correctly, and legibly, and that on each succeeding pay roll the name shall be entered in the same manner or explanation made as to the reason for any change. Do not write John M. Doe one time, J. Marcus Doe another, or John Doe, Mark Doe, J. M. Doe—write the names uniform on all vouchers.

209. *Payee's certificate omitted.*—If vouchers covering personal services are rendered without the certification of the payee under paragraph 3 of the Treasury Circular No. 52, dated July 29, 1907, which provides "that vouchers for personal compensation for services rendered under the personal supervision of some administrative officer and so certified by him, need not be certified by the claimant, provided the voucher describes specifically the position, the rate of

compensation, and the period covered," those conditions must be fulfilled. The term "assistant" does not describe specifically the position of an employee.

210. *Personal service defined.*—The comptroller, in Treasury Circular No. 36, June 21, 1911, defines personal services as "services which are personal in character—that is, which consist in acts of particular persons, performed by virtue of a contract (express or implied), or by virtue of the existence of an official relation, which places the skill or ability of the persons rendering such services under the continuous direction and control of another (employer or official superior) during the period of service * * *."

211. *Computation of salaries.*—The act of Congress approved June 30, 1906 (34 Stat. 763), providing for computation of annual or monthly compensation, has been construed by the comptroller under date of March 24, 1917 (23 Comp. Dec. 793), as requiring that—

> 1. Each calendar month shall consist of 30 days, and the computation of salary shall be by each month separately, one-twelfth of an annual salary constituting the compensation for each month.
>
> 2. One-thirtieth of a monthly installment of salary is to be allowed for each day of service from the 1st to the 30th, inclusive. The last day of February counts as three days of service for pay purposes (two days in leap years).
>
> 3. The 31st day of a month enters into the computation of salary only where there is *one day's* absence in a nonpay status on that day—that is, absence in a nonpay status did not occur also on the 30th. For such absence on the 31st one day's pay is forfeited.

212. *Per diem rates of compensation.*—The above method of computation applies only to annual or monthly compensation of persons in the service of the United States and not to per diem rates of compensation, rents, or livery, which are explained in paragraph 299. Except where otherwise specified, field employees at a per diem rate of compensation will be allowed payment for Sundays and legal holidays included within the period of service.

213. *Rate in Alaska.*—An employee who receives a higher rate of compensation or per diem in lieu of subsistence while in Alaska is not entitled to such higher rate before arrival at an Alaskan port in going nor after departure from an Alaskan port in returning, and all vouchers including the commencement or completion of a period at the higher rate must show time of arrival at or departure from Alaska.

214. *Oath of office.*—Section 1757, Revised Statutes, as amended by section 2 of the act of Congress approved May 13, 1884, provides that "any person elected or appointed to any office of honor or profit either in the civil, military, or naval service of the United States," shall take and subscribe the following oath:

> I, A. B., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

215. *Oath to be filed before payment.*—The comptroller has held (4 Comp. Dec. 95) that a person employed or appointed to any position not created by law and payable from a general appropriation is not an officer within the meaning of section 1757, Revised Statutes,

and that, therefore, the taking of an oath in such cases is not a condition precedent to the right of compensation. However, as the regulations of this department require all classified employees to take an oath of office in form as above quoted, disbursing officers are not authorized to make payment to such employees until the required oath has been filed.

216. *Services before taking oath.*—As soon as the necessary oath has been filed payment of compensation may be made from the date of entrance on duty notwithstanding the fact that the oath may not have been taken until some time subsequent to the date of entrance on duty.

217. *Expense of taking.*—In no case is an employee entitled to reimbursement for the expense incident to taking the oath of office.

218. *Salaries of statutory clerks.*—The salaries of clerks, chiefs of divisions, etc., of this office are paid by the chief disbursing clerk of the department on a pay roll certified by the Secretary on a certificate from this office as to the changes in the office force during the month, and no other disbursing officer should pay salaries of any such employees unless he is specifically directed to do so.

VOUCHERS FOR SERVICES AND TRAVELING AND OTHER EXPENSES

219. *Traveling expenses—Only actual to be allowed.*—The act of Congress approved March 3, 1875 (18 Stat. 452), provides:

> That hereafter only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, except marshals, district attorneys, and clerks of the courts of the United States and their deputies; and all allowances for mileages and transportation in excess of the amount actually paid, except as above excepted, are hereby declared illegal; and no credit shall be allowed to any of the disbursing officers of the United States for payment or allowances in violation of this provision.

220. *What may be reimbursed.*—The Comptroller of the Treasury in a decision dated July 29, 1905 (12 Comp. Dec. 48), holds that:

> Employees are not entitled to reimbursement for expenses of the Government paid by them out of their private funds, except where such expenditures were for services engaged or articles purchased under stress of urgent and unforeseen public necessity or for personal traveling expenses.
>
> A field employee of the General Land Office may be reimbursed as a part of his personal traveling expenses, for expenditures made by him for guides where their services were necessary and their employment occasional and temporary.
>
> A field employee of the General Land Office is not entitled to reimbursment for expenditures for "assistants" unless it appears that they were employed under urgent and unforeseen public necessity, and that such employment did not continue for any considerable period of time.

221. *Traveling expenses defined.*—Unless otherwise provided by law, the expenses of all officers or other persons traveling on duty or other public business for or on account of this office shall be confined to actual and necessary traveling expenses as hereinafter defined.

222. *Authority for.*—All travel expenses shall be either authorized or approved in writing by the department, by this office, or by some subordinate officer to whom such authority has been properly delegated, and, except as provided in paragraph 223 following, the authority shall be issued prior to the incurrence of the expense; shall specify the travel to be performed as definitely as circumstances will

permit, and shall be attached to the voucher for reimbursement or (if on file in the auditor's office) be referred to therein.

223. *Approvals.*—(*a*) Whenever the travel is a necessary and regular accompaniment of the office or place to which an appointment has been made and the general classes of the expense to be allowed are governed by law or are specified in the appointment, or (*b*) whenever the expense has been incurred on account of an emergency, the approval by this office shall be sufficient authorization. However, all vouchers for reimbursement on account of emergency travel without prior authorization must be accompanied by full and satisfactory explanation of the facts constituting the emergency.

224. *Headquarters.*—The selection of official stations and the assignment of temporary headquarters is placed under the control of the commissioner, subject to revision by the Secretary on his own initiatitve or upon application of an interested party. The official stations of chiefs of field divisions have been definitely established and special agents, mineral examiners, timber cruisers, practical miners, and other employees in that branch of the service are to be considered as having their official headquarters with the chiefs of their respective divisions. The official station of the supervisors of surveys is Denver; and the official stations of the assistant supervisors of surveys, surveyors, and transitmen are with the surveyors general of the States to which they may be assigned or such other quarters as may be authorized or designated within that city. Field assistants to surveyors will not be assigned headquarters.

225. *Change of headquarters.*—Employees may be ordered from one division or district to another from time to time and the headquarters of the division or district to which they are assigned will be their headquarters while engaged in such division or district. However, if it is known in advance that the new assignment is purely temporary and that the employee will return to his old headquarters at its termination, and his travel orders state specifically in advance that his headquarters will remain unchanged during the period of detail, his headquarters will remain the same.

226. *Route.*—All travel performed on official business must be by the shortest practicable route, unless otherwise authorized, and without any unusual or unnecessary delay. The route shall be carefully arranged to avoid unnecessary duplication of travel. When diversion from the shortest practicable route is permitted, the extra expense to be borne by the traveler, the charges for meals shall be limited to the meals which ordinarily would have been taken had the shortest route been traveled, and the extra time consumed shall be charged as annual leave or leave without pay.

227. *Limitations and specific exceptions.*—Certain limitations on, or specific exceptions to, the general rules governing travel expenses and allowances may here be noted:

Assistants such as are enumerated in paragraph 254 are entitled to sleeping car accommodations, provided the Government is not charged with more than $3.50 for one day for such accommodations and subsistence combined. The principal assistant and assistant chainman may be transported from the headquarters of the State or from their home, if within the State, to the field; other subordinate assistants may be transported from the outfitting point or from the nearest town thereto (not distant from the field more than 50 miles by rail); and those assistants who remain to the close of the season's work may be returned to the point from which they were originally transported. The two assistants first named may be transported from one group to another within the State and the other assistants may be so transported when the distance in each case is no more than 50 miles by rail. Assistants other than the first two may not be transported a distance greater than 50 miles by rail, except (*a*) in cases where specific and special authority is granted, and (*b*) in cases where such assistants are employed on one group and taken by successive stages to other groups each no more than 50 miles by rail from the next preceding and, having remained to the end of the season, are then entitled to transportation back to the point from which they were transported, without reference to the distance. If in rare instances cases arise in which it is impossible to engage assistants at the rate of compensation stated in paragraph 254 a statement of the facts in the particular case should be transmitted to this office through the proper channel (assistant supervisor and supervisor of surveys) and authority for paying a greater amount asked, and, if cases should arise in which assistants can not be employed with such travel allowance as is authorized by this paragraph, the facts should be stated by or through the assistant supervisor to the supervisor of surveys who, if the facts seem to warrant, may authorize transportation for a greater distance within the State. Should the emergency in either case be such as to preclude the possibility of securing previous authorization the nature of the emergency should be clearly set forth in writing as directed by paragraph 252.

228. *Daily reports.*—All detailed clerks and other employees not in the surveying force (who render weekly reports) or regular field service (who submit daily reports) will render daily reports for all periods of service outside of the District of Columbia, adapting Form 4–509, in accordance with circular of September 30, 1916.

Expense vouchers will not be approved until reports for all the days covered thereby are received in this office.

229. *Travel expense—On entrance on duty.*—Field employees, the nature of whose duties ordinarily require them to travel on duty, whose appointments are signed by the Secretary or the commissioner, will be allowed traveling expenses to their respective divisions or districts, and may, in the discretion of the commissioner, be allowed traveling expenses in returning from the field on separation from the service or on indefinite furlough without pay.

All other employees must place themselves at the place of official duty at their own expense, unless, when employed under lump-sum appropriations, other provision is made as to the payment of traveling expenses as a part of their compensation in their contract of employment and except as herein otherwise provided. Agreements to pay traveling expenses must be made in advance of the incurrence of the expense, and only after authority to enter into such agreements has been properly delegated.

230. *Travel expense—On change of station.*—A person who is away from his official station on his own business or pleasure must, at the expiration of his leave of absence, report to his station, and if during the absence the station is changed, and the expenses of

travel to the new station are not greater than those of return to the former station would have been, there can be no allowance of traveling expenses to the new station. Reimbursement can be allowed for the excess only of the distance from the place of receipt by him of his order to his new station over the distance to his old station. (7 Comp. Dec. 84; 8 Comp. Dec. 190.)

A clerk detailed to temporary duty in the field while on leave of absence is entitled to reimbursement for traveling expenses from the place where he receives his instructions to travel to the place to be visited and return to the place where his instructions were received. (Comp. Dec. Jan. 18, 1915; Jan. 27, 1916.)

ALLOWABLE TRAVELING EXPENSES

TRANSPORTATION

231. *Railroad, steamer, and other fares.*—Fares upon railroads, stage coaches, steamers, packets, or other usual modes of conveyance. Charges for fares on steamers, packets, or other means of travel by water must show whether meals or lodging, or both, were included without increase of fare over the lowest first-class rate. (For meals on boats see par. 246; for excess fare on trains see par. 252.) Through tickets, excursion tickets, and round-trip tickets must be purchased whenever practicable and economical. (For transportation request see pars. 274–276; for mileage and scrip see pars. 276–281.

232. *Excess baggage.*—Charges for excess baggage, when the extra weight consists of public property or private property to be used for public purposes. Such charges must be explained. When practicable, excess baggage should be forwarded by freight or express, and if prior authority is procured may be covered by Government bill of lading. When using bill of lading a consignor must deliver shipping order to agent of receiving carrier, send original by first mail to consignee and send blue memorandum copy by first mail to this office (except such as must come through a surveyor general). Mailable articles should be forwarded by mail under penalty label by the Government officer or employee.

233.[35] *Special conveyances.*—Hire of special conveyances, such as taxicabs or other automobiles, livery, or boat, only when no public or regular means of transportation are available and the necessary incidental expenses connected therewith, such as feed and stabling of horses and the subsistence of driver, ferriage, and tolls. Also services of and subsistence of guide when no driver is employed. If the charges for special conveyance include feed and stabling of horses and subsistence of driver, or any such items, the principal voucher or subvoucher must so state. The advantage and economy of hiring automobiles instead of teams must be shown in connection with all charges for auto hire, and the maximum amount that may be paid by special disbursing agents without specific authorization by the commissioner is $20 a day for hire of each auto. If in rare cases it is necessary to exceed this rate, the excess amounts must not be paid until full explanation has been submitted to the commissioner and receives his approval.

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[35] See amendment, p. 139.

234.[36] *Transfer of self and baggage.*—Fares on street car, transfer coach, omnibus, or other vehicle, and the transfer of baggage. A charge not to exceed 50 cents for either transfer coach or omnibus, or for the transfer of each piece of baggage, if within the customary rate, will be allowed. Payment in excess of this amount must be explained in writing, and *street cars must be used when practicable.*

235.[37] *Checking and handling of baggage.*—Charges for checking or porterage of hand baggage at hotels and stations, not exceeding 10 cents for each piece.

236.[37] *Steward fees and steamer chairs.*—Customary fees to stewards and others on steamers, as follows: For an ocean trip, not exceeding a total at the rate of $1 per day or fraction thereof; on coastwise steamers, not exceeding 50 cents per day; rent of steamer chair, not exceeding $2. On ocean and coastwise steamers, where meals are not included in the cost of passage, fees to dining-room stewards and dining-room waiters must be included as a part of the maximum daily allowance for subsistence. Fees to porters and cabin or deck stewards on such vessels will be deemed expenses of transportation.

237. *Pullman fares and state-room accommodations.*—Sleeping-car fare for one double berth, customary state-room accommodations on steamers and other vessels, and fare for one seat for each person in sleeping or parlor car. The subordinate assistants mentioned in paragraph 254 are not entitled to parlor car or seat fare and are entitled to sleeper fare, provided the Government is not charged with more than $3.50 for one day for such accommodations and subsistence combined. Pullman charges must specify whether for a seat or upper or lower berth, and whether for standard or tourist service.

238.[37] *Porter fees.*—Porter fees on sleepers must not exceed 25 cents per night. Porter fees on sleeping cars used in the daytime or in parlor cars or chair cars must not exceed 15 cents per trip.

SUBSISTENCE

239.[37] [38] *Maximum amount allowed.*—Act of Congress approved April 6, 1914, provides that:

> On and after July first, nineteen hundred and fourteen, unless otherwise expressly provided by law, no officer or employee of the United States shall be allowed or paid any sum in excess of expenses actually incurred for subsistence while traveling on duty outside of the District of Columbia and away from his designated post of duty, nor any sum for such expenses actually incurred in excess of $5 per day; nor shall any allowance or reimbursement for subsistence be paid to any officer or employee in any branch of the public service of the United States in the District of Columbia unless absent from his designated post of duty outside of the District of Columbia, and then only for the period of time actually engaged in the discharge of official duties.

Therefore, except where otherwise expressly provided by law, subsistence items hereinafter defined in paragraphs 240 to 243 may not be allowed in excess of $5 per day. While in camp surveyors and their assistants will be subsisted from Government stores; such employees in Alaska will, when going to or returning from the field, be allowed reimbursement up to this maximum in cases where a lower rate can not ordinarily be obtained; in the States the maximum for surveyors and their assistants is $3.50 per day, while going to or returning from the field. No employee is allowed subsistence, reimbursement therefor, nor a per diem in lieu thereof while at his official headquarters or at his home, unless his presence in his home town is made necessary in the performance of field duties.

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[36] Amended by Circular No. 906, not carried in this publication. Matter is now governed by the Standard Government Travel Regulations.

[37] Modified by Standard Government Travel Regulations.

[38] See amendment, p. 127. Also see orders of Oct. 13, 1928, p. 161, and Aug. 1, 1929, p. 164.

240.[37] *Meals and lodging.*—Meals and lodging when the detention away from headquarters is incident to or necessary for the performance of the duties for which the travel is ordered, and necessary meals en route, but for no items of refreshment other than the ordinary food provided for travelers. Charges for meals must be itemized by meal in every instance.

241.[37] *Waiters' fees.*—Fees to waiters at hotels or on dining cars or boats not exceeding 10 cents per meal, or 30 cents per day.

242.[37] *Baths.*—Charges for baths not exceeding 25 cents each while absent from designated headquarters.

243. *Telegraph expenses.*—Charges for telegrams reserving hotel accommodations.

244.[37] [39] *Per diem in lieu of.*—Supervisors of surveys, assistant supervisors of surveys, the chief of field service, chiefs of field divisions, special agents, mineral examiners, timber cruisers, and practical miners are allowed $3.50 per diem in lieu of subsistence when engaged in field work or traveling on official business outside the District of Columbia and away from their designated posts of duty, and of these, those employed under protecting public lands, timber, etc., will, while on duty in Alaska, receive $5 per diem under the same conditions. During leave of absence that may be granted no subsistence or per diem in lieu thereof will be allowed from the date that such leave begins to the day that the employee again enters upon active duty in a travel status.

245. *To include what.*—Per diem in lieu of subsistence is held to be in lieu of the items mentioned in paragraphs 240 to 243, and no charges for any other items of subsistence will be allowed.

246. *On board boats.*—No per diem in lieu of subsistence will be paid during travel on a boat when the charge for transportation includes meals and berth, but reimbursement for other authorized items of subsistence not included in the charge for transportation may be allowed.

247.[37] *Fractional days.*—The allowance of per diem in lieu of subsistence being dependent upon absence from official headquarters or designated posts of duty, if the traveler leaves his headquarters before 12 o'clock noon, to be absent on duty the balance of the calendar day, he will be allowed the whole per diem, and when returning to headquarters after traveling from midnight, if he arrives after 12 o'clock noon he will also be entitled to the whole per diem, but if in departing he leaves after noon or in returning arrives before noon only one-half of the per diem will be allowed.

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[37] Modified by Standard Government Travel Regulations.

[39] See amendments, p. 127. Also see Circulars of July 3, 1926, p. 146, and March 22, 1928 (No. 1143), p. 153, and Orders of Aug. 11, 1926, p. 146, Oct. 13, 1928, p. 161, and Aug. 1, 1929, p. 164.

If a traveler leaves headquarters any time during the day and returns thereto before midnight, only one-half of the per diem will be allowed.

Per diem will be allowed for days on which the traveler boards or departs from a boat when the charge for transportation includes meals and berth, exactly the same as if the boat were his headquarters. When the whole or half per diem is allowed, no other items of subsistence are allowable for that day.

One-fourth of the per diem allowance shall be deducted for each meal taken in a Government-maintained camp.

Travel expense vouchers shall show the hour and date of each departure from and arrival at headquarters, and each embarkation or disembarkation, and state specifically the meals taken in a Government-maintained camp during the period for which they are stated.

MISCELLANEOUS EXPENSE

248.[37] *Telegraph service.*—Telegrams and cablegrams on official business at Government rates. Night service should be employed when practicable. Telegrams should be sent as " paid " messages—that is, chargeable to the sender—should be signed by him, and should be marked as follows:

Official business: Government rate. Charge General Land Office. Card No. ———.

Classified employees authorized to travel on duty, as well as surveyors general, are supplied with Western Union and Postal Government rate cards, and their card numbers should be shown on the original messages. If compelled by force of circumstances to pay for the telegram, the necessity therefor should be explained in writing. Charges for telegrams and cablegrams must be accompanied by copies of messages, marked to show whether sent at day or night rate.

249. *Telephone service.*—Reasonable charges for the use of telephones on official business. Charges for long-distance calls should show with whom the communication was held and the points between which the service was rendered.

250. *Freight and express.*—Freight and express charges on shipments in connection with official duties in the field, when it is necessary to make payments from private funds, but all such charges must be supported by a statement to the effect that no Government bill of lading was used. Express and freight receipts must be furnished for all such charges, regardless of the amount, showing weight and rate.

251. *Incidental expenses.*—Charges for ink, mucilage, library paste, and typewriter oil (but for no other items of stationery), and charges for other miscellaneous items of expense peculiar to the exigencies of the work on which employed, such as kodak supplies, developing and printing in connection with cases under investigation. Charges for registry or post-office money-order fees when official business demands either.

252. *Emergency expenditures.*—Emergency expenditures not enumerated in the foregoing classes, such as payment of extra fares on limited trains when delay would injuriously affect the public interests. In connection with all emergency charges full authority for

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[37] Modified by Standard Government Travel Regulations.

which does not previously exist the nature of the emergency must be clearly set forth in writing and must receive the approval of this office or of the subordinate officer to whom such authority may have been delegated.

253. *Field party expense.*—Surveyors in charge of parties are authorized to hire (under proper supervision) the assistants named in paragraph 254; to procure or otherwise arrange for their subsistence en route; to purchase the supplies, utensils, and other minor articles necessary for subsisting them in camp, for maintaining such camp, and for the proper conduct of the surveying work; and to hire the necessary transportation equipment when no Government animals or wagons are available. When such service is temporary and it is impracticable to have them paid by a disbursing officer, expenses of this character may be paid from personal funds, subvouchers to be taken therefor in accordance with paragraphs 264 to 268, inclusive. Subvouchers for subsistence supplies for camp use must show the number of persons composing the field party for the use of which the supplies were purchased. Expenditures from personal funds for items enumerated in this paragraph must be limited strictly to those obligations which it is impracticable to have paid directly by a disbursing officer.

254.[40] *Rates of compensation authorized.*—Compensation for the surveying service will be limited to the following rates:

Surveyor's principal assistant, teamster or packer, and cook for double party, $60 per month each; assistant chainman, $55 per month each; cook for single party, $50 per month each; all other subordinate field assistants, including axmen, cornermen, flagmen, rodmen, etc., $45 per month each. In Alaska the following rates may not be exceeded except upon special authority from this office: Packers and cooks, $105 per month when hired in Alaska, or $90 per month when hired in the States and their fares paid to Alaska; others $90 per month when hired in Alaska or $75 per month when hired in the States and their fares paid to Alaska. Existing authority to exceed temporarily the above rates of pay is not to be disturbed by this more permanent regulation.

255. *Fees advanced to witnesses.*—Section 2 of the act of Congress approved January 31, 1903, providing for the compulsory attendance of witnesses in land hearings, provides "that witnesses shall have the right to receive their fee for one day's attendance in advance." When, therefore, an employee of this bureau serves a subpœna on a witness under the act mentioned and the witness at that time demands his fee for one day's attendance and mileage in advance, he may advance the amount from his personal funds, taking a subvoucher therefor, and claim reimbursement in his regular voucher for services and traveling and other expenses. Such items will be listed after the regular expense items, a space being left between, and the employee will indorse in parenthesis over the double line above "date" and "subvoucher number" the amount chargeable to the appropriation for "expenses of hearings in land entries," as "(Hearings, $2.85)."

256.[37] *Items not allowed.*—Employees will not be allowed reimbursement for exchange paid for cashing drafts or checks received in payment of vouchers for services and traveling and other expenses, nor will they be allowed reimbursement for surgical or medical fees.

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[37] Modified by Standard Government Travel Regulations.
[40] See amendments, pp. 137 and 138.

257. *Tax exemption.*—Payments by employees for freight, express, passenger, sleeping or parlor car, telegraph, telephone, and radio service, incurred in connection with official business, are exempt from the Federal tax imposed by act of Congress approved October 3, 1917 (40 Stat. 314). In cases of transportation, exemption certificate, Form 731, issued by the Commissioner of Internal Revenue (Interior Form 1–398) should be delivered to the conductor or agent in lieu of the tax. In other cases the employee should state that the matter is official business of the United States Government. A certificate should be made on vouchers containing such taxable items, as follows: "I certify that no war revenue tax is included in the above charges."

258. *Injuries to employees.*—Every civil employee receiving an injury while in the performance of duty should immediately seek first-aid treatment and promptly make report of his injury to his immediate superior. Under act of September 7, 1916 (39 Stat. 742), he is entitled to receive reasonable medical, surgical, and hospital services and supplies, to be furnished by United States medical officers and hospitals where possible, and, during the period of total disability, compensation is payable at the rate of two-thirds of his monthly pay, but can not exceed $66.67 per month. Annual or sick leave, when available, may be used in preference to compensation under this act. Claims under this act are to be settled by the United States Employees' Compensation Commission, Washington, D. C

EVIDENCE OF EXPENDITURE

259. *Memorandum of expenses.*—Every officer or other person traveling should keep a memorandum of the expenses incurred, noting each item as soon as payment is made

260.[37] *The principal voucher.*—All accounts for reimbursement on account of travel expense, or other expense the reimbursement of which may be authorized, shall be submitted on the regular voucher form (4–152) approved by the Comptroller of the Treasury; shall be itemized as fully as practicable and in accordance with paragraphs 269 to 273, inclusive, following; shall be supported by subvouchers, as required by paragraphs 264 to 268, inclusive, and shall include the services rendered and expenses incurred during a particular month.

261. *How verified.*—All travel-expense vouchers, except as noted below, must be sworn to in the manner and form prescribed by law or approved by the Comptroller of the Treasury.

As provided by section 8 of the act of August 24, 1912, affidavits may be executed before a postmaster, an assistant postmaster, a collector of United States customs, a collector of United States internal revenue, the chief clerk of any department or bureau, or the clerk designated by him for that purpose; the superintendent, acting superintendent, custodian, or principal clerk of any national park or other Government reservation; the superintendent, acting superintendent, or principal clerk of any Indian superintendency or Indian agency; the chief of a field party, or a notary public who is in the service of the United States. The officers named are not permitted by law to make any charge for such service and no jurat fee will be allowed therefor.

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[37] Modified by Standard Government Travel Regulations.

Affidavits executed before any other officer who has been authorized to administer oaths for general purposes and whose signature is attested by an official seal will be accepted, but no jurat fee will be allowed.

262. *Affidavit may be omitted when.*—Where the employee is far removed from an officer before whom the oath can be taken, or where, by the taking of such an affidavit, the disclosure of the fact of the presence of a Government officer, agent, or employee at the particular place where such affidavit is taken will be detrimental to the public interests, the oath may be omitted and the account certified on honor as correct, provided the employee shows on the voucher over his signature the place and date of such certification on honor and the conditions which made it impracticable to make affidavit. In cases where the affidavit is omitted the employees should strike out " I do solemnly swear " and insert in place thereof " I certify on honor," and should sign such certificate, after which, on the lines provided for the officer's jurat, he should show the place and date of certification and the reasons which made the affidavit impracticable, which statement he should also sign.

263. *False accounts—Penalty.*—False or fraudulent representations in connection with the rendition of reimbursement or other accounts are unlawful, and the offender is liable to a heavy fine or imprisonment under the act of Congress approved March 4, 1911 (36 Stat. 1355).

264. *Subvouchers—Defined.*—A subvoucher consists of two parts, in both of which it must be complete: A receipt showing that a specific amount, written therein in words, was received on the date indicated from the party claiming reimbursement, and an account showing, if for purchases, the date of purchase and character, quantity, and price of the articles, and, if for services, the character of the service or capacity in which employed, dates inclusive of service, number of days, rate per day, or per meal, as the case may be, and amount.

265. *Subvouchers—To be filled in before signature.*—Subvouchers, like vouchers, must be completely filled in by the payee, or before signature by payee, without alteration or erasure at any time, and must be signed with the full name of the payee or his authorized agent, the relation of the signer to his principal being shown in such cases and if a signature is by mark it must be witnessed by a disinterested party.

266. *Subvouchers—When required.*—Express and freight receipts will be accepted as subvouchers and must be furnished for all such charges. The weight and rate must be shown.

Copies of telegrams or of cablegrams will be accepted as subvouchers, and must be furnished in support of all such charges. The copy shall show whether the message was sent at day or night rate.

Subvouchers must also be furnished for all other charges in excess of $1, except as noted below in paragraph 267.

267. *Subvouchers—When not required.*—(*a*)[41] Subvouchers are not required for railroad or steamboat fares, sleeping or parlor car fares, taxicab fares (see pars. 233 and 234), nor for separate meals specifically named which were not taken in connection with lodging.

(*b*) Subvouchers will not be required when the taking thereof would disclose the identity of the traveler and the disclosure would be detrimental to the public interest, provided authority for their omission is granted by the Secretary, or by this office.

268. *Subvouchers—How stated.*—Subvouchers for hotel expense must state the beginning and ending of the full period of service and the rate by the day or week. The " day " shall be considered as beginning with breakfast and ending with lodging. Receipted bills on the regular billheads of the hotel are acceptable as subvouchers, provided they are properly made out to show the entire period and the services rendered.

Subvouchers for livery and other special transportation must describe the service hired, as " one horse and buggy," " two horses and wagon," " with driver; " state the quantity of service rendered, and the rate of compensation by the day, hour, or other unit, as may have been agreed. If the subsistence of driver or team is included in the cost of hire, that fact must be stated.

ITEMIZED STATEMENT OF EXPENSES

269. *What shall be included in.*—Every item of expense incurred during a particular month must, in every case, be included in the voucher for that month; or, if omitted therefrom or deducted before payment, must be stated in a supplemental voucher for the month to which such expenses pertain, explanation being made in connection with omitted items as to why they were not included in the original voucher.

270.[37] *Manner of stating items.*—The items of expense shall be stated in the order in which they are paid, the date of payment being shown in the date column and the subvoucher number in the subvoucher column; each item should be carried out separately, except in the case of subvouchers each of which should be stated as one item, and each item should show (*a*) date of payment, (*b*) number of subvoucher, if any, (*c*) the name and address of payee, (*d*) the character of the service or capacity in which employed, (*e*) the dates inclusive of service where time is a factor, and (*f*) the amount, following carefully the sample given under paragraph 273. If an item is not supported by a subvoucher the charge in the itemized statement should set forth all the facts required of subvouchers except the payee's receipt. (See pars. 264 to 268.) In writing the itemized statement the lines should be at the intervals indicated on the blank and there should be no writing between the lines.

271. *When an assistant's expenses may be included.*—(*a*) When an employee is traveling on duty with assistants he may pay their traveling expenses from his personal funds and include such expenses in his own " Voucher for services and traveling and other expenses," supported by subvouchers where necessary, and (*b*) when a driver or

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[37] Modified by Standard Government Travel Regulations.

[41] Amended by Circular No. 832, not carried in this publication. Matter is now governed by the Standard Government Travel Regulations.

other employee is detailed to a near-by town or railroad station for provisions, supplies, mail, etc., and in that connection expends money advanced him by his principal, for subsistence of himself and keep of team, such expense may be stated in the principal's voucher as though made by him direct. Subvouchers in such cases should be taken in the name of the principal, showing payment by the detailed employee as deputy.

272. *Assistants' expenses not included when.*—In all other cases every assistant or subordinate employee must state in his own name, supported by subvouchers and duly sworn to, a "Voucher for services and traveling expenses" for all items of expense paid by him that should be reimbursed by the Government.

273.[37] *Sample itemized statement.*—In this sample no attempt is made to connect any charge with a prior one; each item must be considered as standing alone. The sample does not authorize any of the expenses represented, but when an employee has incurred an authorized expense he may refer to the sample as a guide for stating the charge in the approved form on his voucher. This warning is necessary because the sample covers items that would be proper for an employee with actual subsistence, but not for one who receives a per diem in lieu of subsistence.

Date	Sub-voucher No.	Itemized statement of expenses	Amount
1918 July 6		D. & R. G. R. R., fare, Denver to Glenwood Springs, Colo	$10.00
6		Pullman Co., lower standard berth, Denver to Glenwood Springs	2.00
6		Seat in parlor car, Alamosa to Denver	.75
6		Alaska S. S. Co., fare, Seattle, Wash., to Valdez, Alaska	45.00
6		Myrtle Point Stage Co., fare, Myrtle Point to Roseburg, Oreg	7.00
7		D. & R. G. R. R., fare, Walsenburg to Pueblo Colo., for assistants Chamberlain and Vandergift, at $2.25	4.50
8	1	Myrtle Point Stage Line, fare	2.00
9	2	George Wills, Durango, Colo., livery hire, July 8–9	10.00
9	3	George Wills, Durango, Colo., auto hire, July 8–9	30.00
9	4	Harry Ross, Tanana, Alaska, hire launch, July 9	10.00
9		George Wills, Durango, Colo., hire two horses and buggy, without driver, 9 a. m. to 11 a. m., July 9	1.00
10		Howard Phillips, Newcastle, Colo., ferriage of self, two horses, buggy, and driver across Grand River	1.00
10	5	Howard Phillips, Newcastle, Colo., ferriage, July 10	1.50
10		Toll over Rifle and Meeker turnpike, Rifle to Meeker and return	.75
10		The Barton Ferry, fare, Barton to Amity and return	.50
11		Fee to porter on sleeper, Denver to Glenwood Springs	.25
11		Fee to cabin boy, Seattle to Valdez	.25
11		Fee to porter on parlor car, Alamosa to Denver	.10
12		Transfer self and baggage, hotel to depot, Alamosa	.25
12		Transfer baggage, depot to home, Denver (3 pieces)	.75
12		Street-car fares in Denver (3)	.15
13		Checking baggage at depot, Denver (2 pieces)	.20
13		Porterage on baggage at depot, Denver	.10
14		Breakfast on dining car, Denver to Glenwood Springs	.85
14		Fee to waiter on diner, breakfast	.10
14		Foley's Cafe, Glenwood Springs, dinner, July 14	.35
14	6	John Small, Starkville, Colo., B. & L. self and two assistants, 12B–15L	18.00
15	7	James West, Durango, Colo., B. & L. team (75), and driver (75), 13S–14B	1.50
15		John Ross, Durango, Colo., dinner for team (50), and driver (25)	.75
15		Frank Rose, Walsenburg, Colo., dinner for assistants, Chamberlain and Vandergift, July 15	.70
16		Warren York, La Junta, Colo., 1 bottle of ink	.15
17		Paul Gahn, Morley, Colo., services as guide locating section corner, 2 to 5 p. m., July 17	1.00
18		Telegram, Trinidad, to United States Surveyor, Jones, Denver (identification card not available)	.20
18		Telephone, Trinidad to Special Agent Jones, Denver (3 minutes)	.90
19		Registering report to Commissioner General Land Office	.10
20	8	D. & R. G. R. R., freight on 1 box of surveying instruments, Trinidad to Denver (Government B/L not available)	.40
21	9	Wells Fargo & Co. Express, express on Jacobs staff, Trinidad to Walsenburg (minimum charge: no Government B/L available)	.25

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[37] Modified by Standard Government Travel Regulations.

Date	Sub-voucher No.	Itemized statement of expenses		Amount
		TRANSPORTATION REQUESTS		
1918 July 22	001	D. & R. G. R. R., fare Denver to Glenwood Springs, Colo	$10.00	
23	002	Pullman Co., lower standard berth, Denver to Glenwood Springs	2.00	
24	003	D. & R. G. R. R., fare Walsenburg to Pueblo, Colo., for self and assistants, Chamberlain and Vandergift, at $2.25	6.75	
25	004	A. T. & S. F. Ry., scrip book 85210 SA, for H. K. Carlton	90.00	
			108.75	
		MILEAGE		
26	01A 02B	D. & R. G. R. R., Denver to Hotchkiss, Colo. 2701–3000. 1–98.		
27	02B	D. & R. G. R. R., Hotchkiss to Gunnison, Colo., 99–207.		
		PER DIEM		
		Leave headquarters. Return headquarters.		
		July 6, 10 a. m. July 14, 4 p. m	9	
		July 17, 12.30 noon. July 17, 10.15 p. m	½	
		July 19, 4.15 p. m. July 28, 10.45 p. m	9½	
			19	$153.30

This total will, of course, be carried to the proper place on the reverse of the voucher where the grand total claimed will be shown, as follows:

Expenditures, as shown by foregoing itemized statement	$153.30
Services, July 1 to July 31, 1918, at $1,200 per annum	100.00
Per diem in lieu of subsistence, July 1 to July 31 (except 12 days—see statement), 19 days, at $3 per day	57.00
Total	310.30

Notes explanatory of foregoing sample.—Reference is herein made in each case to the number appearing in the date column. Quotation marks inclose statement of facts which should appear in the account part of subvouchers. Field employees can not be too deeply impressed with the necessity for stating their travel-expense vouchers in accordance with the sample, for by so doing all the requirements of the accounting officers will be met and the probability of suspension removed.

7. Whenever tickets are purchased for other than self, the name and titles of the extra travelers must be shown.

8. *Subvoucher 1.*—" Fare on stage from Myrtle Point to about 10 miles out in the country and return on July 8, 1918." When fare is not between two definite points regularly traveled a subvoucher is required the same as for hire of special transportation.

9. *Subvoucher 2.*—" Hire of 2 horses and buggy with driver for trip to country and return, distance traveled about 55 miles, from 8 a. m., July 8, to 7 p. m., July 9, 2 days at $5 per day, $10."

9. (*a*). *Subvoucher 3.*—" Hire of automobile with driver, expenses included, for trip to country and return, distance traveled about 160 miles, from 9 a. m. July 8, to 5 p. m., July 9, 2 days at $15 per day, $30." A letter must accompany all vouchers in which charge is made for automobile hire, explaining the necessity therefor and stating the benefit to the Government.

9. (*b*) *Subvoucher 4.*—" Hire of launch with services of boatmen, expenses included, to several points along the Tanana River, distance traveled about 25 miles, from 10 a. m. to 6 p. m., July 9, $10."

10. (*a*). *Subvoucher 5.*—" Ferriage of—(name of employee)—2 horses, buggy, and driver across Grand River, July 10, $1.50." If the service is rendered by a regularly established ferry with fixed rates, and not through accommodations of a private individual, the charge may be stated as shown in last item under July 10.

(*b*) When a toll road is definitely located, the name and address of the party to whom the toll charge is paid may be omitted.

14. *Subvoucher 6.*—"Board and lodging for—(name of employee) and assistants Miller and McDonald, July 12 breakfast to 15 lodging, 4 days at $1.50 per day each, $18."

15. *Subvoucher 7.*—"Board and lodging team (75) and driver (75), July 13 supper to 14 breakfast, for the period, $1.50." Whenever possible the rate per day should be shown on subvouchers.

16. Any ordinary purchase is illustrated here. When several articles are purchased and a subvoucher fully enumerating them is furnished, a brief description of them as a class only need be shown in the itemized statement of expenses as "supplies," "provisions," etc.

20. *Subvoucher 8.*—"Freight on 1 box of surveying instruments, Trinidad to Denver, Colo., July 20, 1918, 100 lbs. at 40 cents per cwt. (no Govt. B/L used), $0.40." A receipt is required for all express and freight charges, regardless of the amount. The weight and rate must always be shown, and there must be a statement as to the nonuse of a Government bill of lading. (See paragraphs 250 and 266.)

21. *Subvoucher 9.*—"Express charges on Jacobs staff, Trinidad to Walsenburg, Colo., 8 lbs. (minimum charge—no Govt. B/L used), $0.25." Instead of showing rate in this instance the statement "minimum charge" is used and is sufficient.

274. *Transportation requests.*—Transportation requests are provided for the use of persons traveling on official business of this office. They protect the traveler from any disallowance on account of an overcharge by the carrier. They may be procured by requisition upon this office (the requisition being made the subject of a separate communication) and may be exchanged for railroad, sleeping or parlor car, or steamer tickets. They should be used only by the party in whose name they are issued; they are not transferable. They should not be used for the payment of livery bills, meals on dining cars, nor any other expenses than those specified. Transportation requests should not be used to pay fares amounting to less than $2 unless necessary or so ordered by this office. If an excursion rate is effective and available, it should be asked for, and the transportation request tendered in exchange should be marked "excursion rate." Should the agent of the company refuse to accept the transportation request for an excursion ticket, a full-fare ticket should be secured in exchange for the transportation request and the fact should be reported to this office.

A traveler must not attempt to secure a refund from a transportation company for the unused portion of a ticket obtained in exchange for a transportation request. The unused portion of such ticket must be forwarded, with a full explanation, to this office.

275. *Using requests.*—When using a transportation request the necessary data, including name or initials of the transportation company, the points of travel, routing, whether upper or lower berth, standard or tourist, the cost of fare, and the names of extra travelers should be indorsed on the request (and so reproduced by carbon process on the duplicate) and the stub; the request should then be dated and delivered to the agent of the transportation company in exchange for the ticket, and the duplicate, bearing such other indorsement as is necessary (such as, for example, the name of the particular Indian reservation) should be immediately mailed to this office in accordance with the instructions on the reverse thereof. If a request is exchanged for mileage or scrip the serial number of the mileage or scrip book and the name of the employee for whose use the book is secured must be indorsed on the request and the dupli-

cate, and, if part of an old book is exchanged (together with a transportation request for the difference) for a new book the serial number of the old book exchanged and the amount thereof unused must be indorsed on the duplicate request. It is most important that the value of transportation secured in exchange for a transportation request shall be indorsed on the duplicate thereof before mailing to this office.

276. *Listing requests, mileage, and scrip in voucher.*—Every travel-expense voucher must show what portion, if any, of the transportation was procured on transportation requests; what portion, if any, was procured by use of mileage or scrip books, giving the dates, points from and to, and the first and last serial number in each case of the mileage or scrip coupons pulled for the particular trip, such use of transportation requests, mileage, and scrip being shown at the end of the itemized statement as per sample under paragraph 273. If a request is issued to procure a ticket for some other traveler, the person using the ticket should be furnished the number of the request and be instructed to state on his voucher that travel between those points was procured on that particular request, giving the name of the issuing officer.

277. *Mileage and scrip.*—Chiefs of field divisions, supervisors of surveys, and assistant supervisors of surveys are authorized to procure mileage or scrip books in exchange for transportation requests, but their use is not recommended except when it appears probable that they will be entirely used within the period of their validity.

278. *Mileage and scrip—Reporting purchase.*—When such a book is procured the fact must be immediately reported to this office. The report must be made in triplicate, on the white, yellow, and blue cards (Forms 161, 161a, and 161b), and must give the number of the transportation request exchanged, the name of the railroad issuing the book, the number of miles or the value of scrip contained therein, the cost of the book, the amount and conditions of refund, and any other information necessary to enable this office to keep an accurate account of said book. The purchaser should certify on the reverse of the original (white) card the place and date of delivery and the States in which the mileage or scrip may be used, secure the receipt therefor of the traveler for whom the book was purchased, if practicable, and transmit the original and duplicate (white and yellow) cards to this office. The blue card should be filed with the purchasing officer's records.

279. *Mileage and scrip—Employee chargeable with value of book.*—Each mileage or scrip book will be charged to the employee in whose name it is issued. He will be held strictly accountable for its proper use and the correctness of the number of miles or the value of the scrip detached for travel between different points, and when the book is exhausted, or when no further travel is to be performed on official business with said book, or when the time limit of the book is about to expire, it should be forwarded without delay to the purchasing officer, who will promptly forward it to the disbursing officer for his particular division, district, or unit for settlement. An employee in possession of such a book at the time of his separation from the service, or upon demand of this office, must settle his accountability therefor before final payment of his salary will be made.

280. *Mileage and scrip—Purchasing officers monthly report.*—At the end of each calendar month each purchaser of mileage or scrip will report to this office what mileage or scrip books have been completely used, forwarded to the disbursing officer for collection, applied on the purchase of new books, or have expired during that month, and will furnish the disbursing officer for his division, district, or unit with a copy of such report.

281. *Mileage and scrip—Refund on.*—All collections on account of refunds in connection with or redemption of unused mileage or scrip should be made by the disbursing officer paying the vouchers of the purchasing officer.

HEARINGS IN LAND ENTRIES

282.[42] *Authorizations for expenditure.*—A disbursing officer is not authorized to make any payment for services of witnesses, taking depositions, or other expense chargeable to "Expenses of hearings in land entries," or any allotment from another appropriation made available for hearings expenses until a schedule of hearings (Form 4–638), including the particular hearing, has been received in triplicate at this office, the expenditure authorized, and the disbursing officer notified thereof by the return to him of the triplicate schedule approved, and a disbursing officer is not authorized to pay any hearings voucher unless it bears the initials, in the blank space under the certifying officer's title, of the chief of field division or of an employee designated by him as a hearings clerk.

283. *Witnesses—Limitation on mileage of.*—A witness can not be compelled under subpœna to appear outside of his own county, and if he does so appear, can claim mileage in but one county; the county where the land office is located if he appears before that office, the county of his residence if he appears before another officer.

284.[43] *Witnesses—Per diem and allowances to.*—Witnesses attending hearings in Montana, Wyoming, Colorado, New Mexico, and the States to the westward thereof are entitled (under the above limitations) to $3 per diem for time necessarily occupied in going to, returning from, and in attendance on the office or officer before whom he appears, and 15 cents for each mile necessarily traveled over any stage line, or by private conveyance, and 5 cents for each mile by any railway or steamship in going to and returning from such office. Witnesses in other States are entitled to $1.50 per day only and for such days only as they are in attendance on the officer before whom testimony is taken, and 5 cents for each mile necessarily traveled in going to and returning therefrom.

285. *Witnesses—Vouchers for services.*—Vouchers for witnesses' services should show whether deposition was taken, or oral testimony was given before the register and receiver, and should be specific as to the dates inclusive of service, and as to the points of travel, the county being given in connection with the initial and objective points and the residence being given by section, township, and range whenever possible.

286. *Witnesses—Salaried Government employees subpœnaed.*—Salaried Government employees when subpœnaed as witnesses in land hearings are entitled to reimbursement for actual and necessary

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[42] See amendments, pp. 137 and 143.

[43] See Circulars Nos. 1075, p. 1112; 1117, p. 1128; and 1142, p. 152.

traveling expenses only, payable from "Expenses of hearings in land entries" in case of hearings under this office and by the Department of Justice when called before a United States court, and those expenses should be stated on "Voucher for services and traveling and other expenses," duly itemized and sworn to in the usual manner. This does not apply to the employees of the Forest Service, who testify in connection with lands located in forest reserves, as their expenses in such cases are paid by their own bureau. Special agents and others whose official duty it is to investigate and find out the facts upon which the case is predicated, and who appear in such case in their official capacity to give evidence of such facts so acquired, should be paid salary and usual traveling expenses for the period required to attend from the appropriation regularly chargeable therewith. (16 Comp. Dec. 411.)

287[44] *Depositions—Vouchers for testimony taken by.*—The act of Congress approved March 3, 1915 (38 Stat. 855), and succeeding acts, in which appropriation is made for "Expenses of hearing in land entries," provide:

> That where depositions are taken for use in such hearings the fees of the officer taking them shall be 20 cents per folio for taking and certifying same and 10 cents per folio for each copy furnished to a party on request.

Where the officer takes the testimony of a witness or witnesses once and furnishes copies of that testimony for use as evidence in other cases under stipulated agreement between the interested parties, he is entitled to 10 cents per folio only for the copies furnished. (Comp. Dec. Jan. 28, 1915.)

The title of the officer taking the deposition should be shown on the voucher in every case.

288. *Depositions—Costs.*—When the deposition is taken in its true sense the fees of the officer taking it shall be paid by the party on whose behalf it is taken. When witnesses of both parties are assembled under authority of act of January 31, 1903, supra, and then in reality the hearing is held, each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses, just the same as when final hearing is held before the local land officers. The cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

PURCHASES AND SERVICES OTHER THAN PERSONAL

289. *Definition.*—Treasury Circular No. 36, June 21, 1911, defines services other than personal as those services:

> * * * which consist in the results of acts of persons who by contract (expressed or implied) have undertaken to accomplish such results without giving to another any right to direct or control their ability or skill—including (1) transportation of persons (service); (2) transportation of things (service); (3) subsistence and support of persons (service); (4) subsistence and care of animals and storage and care of vehicles (service); (5) communication service; (6) printing, engraving, lithographing, and binding (service); (7) advertising and publication of notices (service); (8) furnishing of heat, light, power, and electricity (service); and other classes of service not personal in character, such as (*a*) repairs by contract or open market order, (*b*) storage not incident to transportation, (*c*) court or other public-office service, (*d*)

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[44] See Circular 1142, p. 152.

commercial reference service, (*e*) clipping service, (*f*) computation and statistical service, (*g*) towel service, (*h*) bill-posting service, (*i*) rubbish, ash, and garbage removal service, (*k*) protective, preventive, and other services not personal in character and not otherwise classified.

290. *Advertising required.*—Section 3709, Revised Statutes, provides:

> All purchases and contracts for supplies or services, in any of the departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals.

291. *Advertising—How accomplished.*—As under section 3828, Revised Statutes, and authority thereunder delegated by the Secretary, no advertising, notice, or proposal for the General Land Office or any office therewith connected may be published in any newspaper whatever, except in pursuance of a written authority for such publication from the commissioner; and no bill for any such advertising or publication shall be paid, unless there be presented, with such bill, a copy of such written authority, the only method of advertising open to purchasing officers for the divisions, districts, or units under this office that Treasury Circular No. 52, July 29, 1907, recognizes is by the sending of circular letters to two or more dealers and the posting of notices in public places.

292. *Circular letter proposals.*—Two forms of circular letters (being in each case a letter inviting proposals and the proposal itself) are provided for this purpose, a general form (Form 4–117a) and a form for use in advertising for provisions, supplies, etc. (Form 4–117b). Except when the public exigencies require the immediate delivery of the articles or performance of the service all purchases or services other than personal will be advertised for by mailing or otherwise sending one of these forms properly executed (or other appropriate form describing the articles or services desired and inviting bids thereon) to two or more dealers and by posting a copy thereof in as public a place as is practicable. All the proposals received from the several dealers will be forwarded to this office with the voucher for the first purchase made or services secured under the proposal. If no bids are received (or only one) the names of the dealers to whom circular letters were sent must be shown in connection with the voucher.

293. *Method of or reason for absence of advertising to be shown.*—Purchasing agents or certifying officers must show over their signatures on the vouchers the method of advertising, or show the reason for absence thereof, which they may do by inserting the appropriate one of the figures from 1 to 4 referring to the numbered sections on the reverse of the voucher under "Method of or absence of advertising," and by inserting the necessary additional information, if any, on the blank lines under the section so indicated. Purchasing agents should be careful to see that their certificates are in each case complete and that the exact facts are shown. If competition is solicited in any manner the voucher should set forth that fact and not, by the

insertion of "3" in the blank, state that an exigency existed simply because the methods were not as formal as is contemplated or because the advertisement was not made in connection with that particular purchase.

294. *Advertising and contracts should not be confused.*—The sending out of circular-letter proposals constitutes advertising; the returned proposal, when accepted by the purchasing officer, becomes a contract. There may be advertising and purchase without a contract, and there may be a purchase and a contract without advertising.

295. *Contracts.*—Section 3744, Revised Statutes, provides:

> It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; * * *

Contracts for services, as for rents, telephone service, etc., covering a considerable period must be executed in accordance with this statute, and a new contract should be executed at the beginning of each fiscal year.

296. *Form of contract to be shown.*—Purchasing agents or certifying officers must show over their signatures the character of contract entered into, which they may do by inserting in the second blank of the certificate the letters, A, B, or C, referring to the corresponding sections on the reverse of the voucher under "Form of contract," and indicating, respectively, a formal contract, an accepted proposal, or a less formal contract. The purchasing agent or certifying officer should show on the reverse of the voucher in connection with the indicated section the date of the formal contract or the character of the less formal agreement, and if an accepted proposal is filed therewith he should so state. If the accepted proposal is not filed with the particular voucher on which the indorsement appears, but with a former voucher, the disbursing officer should make specific reference on that voucher to the particular voucher with which the proposal is filed.

297. *Vouchers for purchases, etc.—how stated.*—Vouchers for purchases and services other than personal should show date of delivery of the article or articles, or date of termination of the service performed, the description of the article or character of the service, dates inclusive of service where time is a factor, quantity of the particular article or service or number and size of container, rate per unit, the amount of each item, and the total of the items listed. Whenever practicable bills should be listed and fully itemized on the regular voucher form, but when this is not practicable itemized statements or invoices may be attached to the standard form and the voucher stated and certified for "Provisions and supplies (or other general heading descriptive of the bill purchased) as per itemized statement (or itemized invoice)—four pages—attached hereto and made a part hereof."

298. *Vouchers for freight and express.*—Vouchers for freight and expressage should not ordinarily be paid by a disbursing officer, and when they are so paid (or any voucher containing freight or express charges) must be accompanied by the Government bill of lading covering the shipment or have appended thereto a certificate to the effect that no such bill of lading was used.

299. *Computing rents, monthly hire, etc.*—A claim for hire, keep, subsistence, etc., at monthly rates for certain days (less than a month) "inclusive" should be computed at as many 28ths, 29ths, 30ths, or 31sts (according to the number of days in the particular month) of the monthly rate as there are days from the first to the last of the dates, inclusive.

The method for computing compensations does not apply. (11 Comp. Dec. 494.)

300. *Vouchers for purchase by transfer.*—All vouchers for services rendered or supplies furnished by one department, bureau, or office to another must be transmitted through this office to the Auditor for the Interior Department for settlement and must not be paid by disbursing officers.

CASH

301. *Cash payments.*—As hereinabove stated, payments must be made by check whenever practicable. To cover cases where it is impracticable to make payment in this manner it is provided by Treasury circular No. 102, dated December 7, 1906, that any disbursing officer may draw his check in favor of himself, or "order," for such amount as may be necessary (1) to make payments of amounts not exceeding $20, (2) to make payments at a distance from a depositary, and (3) to make payments of fixed salaries due at a certain period, but in the first and last named cases the check must be drawn not more than two days before the payments become due.

302. *Cash receipts.*—Where payment by check is not practicable and payments are made in cash—that is, currency—the payment must be evidenced by a cash receipt (Form 4–665c) or a receipt substantially the same in form acknowledging receipt from the particular disbursing officer in whose account the voucher appears, in his official capacity (disbursing clerk, special disbursing agent, surveyor general, etc.), on a specific date, a sum therein written in words, in full payment of a definitely indicated voucher. Cash receipts must be signed by the payee in whose name the voucher is stated, or, if an officer or agent receipts for his principal, evidence of his authority to receive the money and receipt therefor must accompany the voucher or be on file with the Auditor. There is no authority for cash payments except where the delivery of the receipt is simultaneous with the payment.

ABSTRACT OF EXPENDITURES

303. *Expenditures to be listed.*—Every item of expenditure for which a disbursing officer claims credit must, as hereinabove indicated, be supported by a voucher properly stated and certified; and every such item must be listed in an abstract of expenditures (Form 4–104), in which, under a single series of numbers running through the entire fiscal year, vouchers will be listed in numerical order without reference to the character of service or appropriation chargeable, the voucher numbers and names of payees being shown in columns indicated and the amounts chargeable to the several appropriations distributed in the proper columns.

304. *What items to include.*—A distinction may here be noted between payments made by an employee from personal funds and pay-

ments made by a disbursing officer from public funds. An employee who advances personal funds for traveling and other expenses must include in his voucher for any month all expenses incurred during that month, whereas a disbursing officer should include in his abstract and carry to his account current only such amounts as are actually paid in cash during the period covered by the account or by check dated within such period, without reference to the period covered by the paid vouchers. As stated in paragraph 195, checks should bear the date on which they are drawn; they are not to be dated within a period unless they are actually drawn within that period in payment of vouchers then on hand properly stated and duly certified.

305. *Appropriation titles—Abbreviating on abstracts.*—As Treasury regulations require that the titles of appropriations, as shown in all estimates, disbursements, accounts, and vouchers, shall be exactly as such titles appear on the books of the Treasury (see par. 180), it is necessary that such titles be shown without abbreviation on requisitions, vouchers, and accounts current, but, on account of the limited space in which the titles of the appropriations must be shown at the top of the columns in the abstract of expenditures, such titles may be there abbreviated, provided such abbreviations are in such form as will be readily recognized by anyone familiar with the several appropriations. The following abbreviations are suggested for the appropriations more commonly used:

Salary Mont., 1918—Salaries, office of surveyor general of Montana, 1918.
Contg. Mont., 1918—Contingent expenses, office of surveyor general of Montana, 1918.
Sur. Pub. Lds., 1918—Surveying the public lands, 1918.
Pro. Pub. Lds., T., etc., 1918—Protecting public lands, timber, etc., 1918.
Sur. Land Grants (R.)—Surveying within land grants (reimbursable).
Open. Ind. Res. (R.), 1918—Opening Indian reservations (reimbursable), 1918.
Comp. Sur. R. R. Grants—Completing surveys within railroad land grants.
Sal. & Com., R. & R., 1918—Salaries and commissions, registers and receivers, 1918.
Contg. Ex. L. O.'s, 1918—Contingent expenses of land offices, 1918.
Ex. Deposit. Pub. Mon., 1918—Expenses of depositing public moneys, 1918.
Hearing Ld. Entries, 1918—Expenses of hearings in land entries, 1918.
Ex. Ins. G. L. O., 1918—Expenses of inspectors, General Land Office, 1918.
A. & S. A. M. R.'s, 1918—Appraisal and sale of abandoned military reservations, 1918.

306. *Extra columns—Additional abstract for.*—In cases where, as may happen during the first quarter of a fiscal year, a disbursing officer expends funds under more appropriations than there are columns of the abstract of expenditures, he will state an extra abstract on which will be listed vouchers representing payments under all appropriations that there is not room for on the regular abstract (preferably those appropriations from which the lesser number of payments are to be made). On the main abstract will be listed all the voucher numbers and the corresponding names of payees in numerical order. Each voucher chargeable to an appropriation not on the main abstract will be listed as to number and name on both the main and the extra abstract, the amount appearing only on the extra abstract in the proper column, the vouchers listed on the extra abstract being in solid rank. That is, if, for example, vouchers 3, 17, 36, 49, and 65 are chargeable to appropriations not on the main abstract,

those numbers with the payees' names will appear in regular numerical order with the other vouchers on the main abstract, and they will be listed in full on the first, second, third, fourth, and fifth lines, respectively, of the extra abstract.

307. *Forward appropriate abstracts with all vouchers.*—Whenever a regulation requires the transmission of paid original vouchers original abstracts listing all such vouchers must be forwarded with them and whenever a regulation requires the transmission of memorandum copies of paid vouchers duplicate abstracts listing the copies so transmitted must accompany them. Never forward paid vouchers or copies without appropriate abstracts.

ACCOUNTS CURRENT

308. *All fiscal transactions to be carried to.*—At the close of each quarter (or on closing an account under one bond on executing another, or on the termination of his services) each disbursing officer must bring all fiscal transactions completed within that quarter (or fractional period) into an account current (Form 4–103c, 4–103e, or 4–661a) in parallel columns by appropriation, showing under *credits:*

(*a*) All balances shown by the last account current to be due the United States, in the same amount in each case and under the same title;

(*b*) All accountable warrants dated within the period;

(*c*) All collections made or moneys received as disbursing officer;

(*d*) All debit differences found by the Auditor and conceded by the officer; and

(*e*) Any other corrections on account of which an appropriation should be credited;

and showing under *debits:*

(*f*) All expenditures made within the quarter (or fractional period) as shown by abstracts and vouchers;

(*g*) Such moneys received as disbursing officer as are returned to depositors during the period;

(*h*) All deposits to personal credit (that is, to the credit of the Treasurer of the United States—Form 1A) covered by certificates of deposit dated within the period;

(*i*) Any credit difference found by the Auditor and concurred in by the officer, or

(*j*) Any other correction on account of which an appropriation should be debited;

(*k*) Any balance due the disbursing officer brought forward from last account, in the same amount in each case and under the same title; and

(*l*) Any balance due the United States at the end of the period for which the account is rendered.

309. *Totals in.*—The total of the items in each line must in every case be carried to the total column and the total of debits in any column must in each case correspond with the total of credits in the corresponding column.

310. *Analysis of balance.*—The total net balance due the United States (ordinarily this is the "Balance due the United States" as shown on that line, but if there should be a balance due the disbursing officer under one or more appropriations, as on account of an overdeposit, the *net* balance will be the difference between the two "balances") at the close of the period for which an account is rendered must be analyzed as indicated in the space provided therefor at the bottom of the account current. If the depositary statement is

not received in time to compute the balance therefrom and yet have time to mail the account within the period required by law, the balance must be computed from the check stubs and a statement made to the effect that the balance was so computed, and the analysis furnished in a separate communication.

311. "*Salaries paid in cash and claim for credit deferred.*"—When pay-roll vouchers are paid by checks there is no reason why all the checks should not issue on the same date, but when payments are made in cash it may happen that one or more employees will not receive pay until the next working day. In such cases credit for the full amount of such pay-roll voucher will be claimed under date of the final payment, and, if the last payment should be in a different quarter, the amount paid thereon during the first quarter will appear only in the analysis of balance in the account current and on the credit side of the cash account, under the heading in each case of "Salaries paid in cash and claim for credit deferred." The entire amount of a partly paid pay roll should be included in the monthly report of expenditures and liabilities (Form 4–163) as an outstanding liability under "unpaid voucher on hand."

(Treasury Circular No. 52, July 29, 1907.)

312. *Outstanding checks.*—Any check issued by a disbursing officer and remaining unpaid must be carried in his analysis of balance as an outstanding check for three full fiscal years, as is indicated by the following quotations from Treasury circulars and Revised Statutes:

> Any check drawn by a public disbursing officer still in the service, which shall be presented for payment within three full fiscal years from its date, will be paid in the usual manner by the officer or bank on which it is drawn, from funds to the credit of the drawer. Thus, any such draft or check issued on or after July 1, 1904, will be paid as stated above until June 30, 1908, and the same rule will apply for subsequent years.
>
> Every disbursing officer will, upon receipt of the statement of his disbursing account for the month of June of each year, from the office or bank in which his funds are kept, immediately make a return to the Secretary of the Treasury of all checks drawn by him which have been outstanding and unpaid for three full fiscal years on the 30th day of June of that year, as also required by section 310 (R. S.), stating the number of each check, its date, amount, in whose favor, on what office or bank, and for what purpose drawn, the number of the voucher in payment for which it was drawn, and, if known, the residence of the payee, and inclose in said return all checks described therein which may be in his possession. (Treasury Circular 42, 1907.)
>
> At the termination of each fiscal year all amounts of moneys that are represented by * * * checks, issued * * * by any disbursing officer of any department of the Government, upon the Treasurer or any assistant treasurer, or designated depositary of the United States * * * and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such * * * checks were * * * issued, or to the persons who are entitled to receive pay therefor and into an appropriation account to be denominated "outstanding liabilities." (306 R. S.)

313. *Cash account.*—If during any period for which an account is rendered a disbursing officer has cash in hand he must render a cash account, for which space and form is provided on the reverse of the

account current. The cash account is subsidiary to the regular account and must include on the *debit* side:

(*a*) The cash on hand as shown by his last cash account:
(*b*) The checks drawn for cash under authority of Treasury Circular No. 102, to make payments in cash;
(*c*) Total collections (posted from abstract) and all cash receipts except on account of concessions, and
(*d*) Debit differences conceded (itemized);

and must show on the *credit* side:

(*e*) The total vouchered expenditures paid in cash during the period;
(*f*) Cash deposits made to personal credit (that is, to the credit of the Treasurer of the United States), or
(*g*) To official credit (that is, subject to his official check),
(*h*) Credit differences concurred in (itemized), and
(*i*) The cash on hand at the end of the period for which the account is rendered.

The cash on hand must agree with the amount of cash shown in the analysis of balance.

314. *Dates on account current.*—It is important that certain dates always be shown on accounts current, and they shall always be shown correctly:

(*a*) The first and last date of the period covered by the account shall be shown at the top of the account current and in the brief on the first fold of the reverse thereof;
(*b*) The date of the bond (which is shown on all copies of requisitions sent to disbursing officers as notice that advance of funds has been requested of the Treasury) shall be shown at the top of each account current;
(*c*) The date to which the account is rendered shall appear in the proper place under "debits";
(*d*) The date to which the next preceding account was rendered shall appear in the proper place under "credits";
(*e*) The date immediately above the disbursing officer's certificate must show the date on which the account is certified; and
(*f*) The date over the "first indorsement" on the reverse thereof must be that on which the account is forwarded to this office.

DUPLICATE, TRIPLICATE, AND OTHER MEMORANDUM COPIES

315. *What copies should be furnished.*—Accounts current, abstracts of expenditures, and abstracts of collections must be stated in triplicate; the triplicate will be retained by the disbursing officer, the duplicate will be forwarded to this office to become a part of the office files, and the original will, of course, be forwarded to this office for administrative action and forwarding to the Auditor for the Interior Department. Two memorandum copies must be made of all vouchers for which a disbursing officer claims credit, the second memorandum copy for the disbursing officer, the first memorandum for this office, and the original for the auditor. Disbursing agents of this office who disburse funds for or on account of another bureau will furnish additional copies of all the above-mentioned papers for the files of this office, it being necessary to forward the duplicate accounts current and abstracts and the memorandum copy of vouchers to the bureau whose funds are disbursed.

316. *Memorandum vouchers shall show what.*—Memorandum copies must show the same facts as the original vouchers, even as to name of certifying officer, and be as carefully itemized. On the memorandum vouchers the notation of check payment, etc. (showing

voucher number, name of disbursing officer in whose accounts said voucher appears, check number, and date of payment) will be at the lower left-hand corner, and in form as follows:

Voucher 98. John Doe (name of disbursing officer, not name of payee).
Check 234, July 10, 1918.

For this purpose a rubber stamp will be used, in form as follows:

Voucher--John Doe
Check--- $———

and the disbursing officers are authorized to purchase such stamp from the appropriation applicable in each case.

317. *No copies of subvouchers.*—No duplicate or memorandum copies of subvouchers need be taken; in fact, duplicate subvouchers should never be taken.

318.[45] *Memorandum copies and monthly report.*—Within three days (Sundays and holidays excepted) after the close of each and every calendar month each disbursing office will transmit (without other inclosure than the papers here named) memorandum copies of all vouchers paid during the month just closed, together with a duplicate copy of the abstract of expenditures in which the several vouchers are listed, and a monthly report of expenditures, balances, and liabilities (Form 4–163), on the face of which shall be shown the period covered and the numbers of the first and last vouchers of which copies are transmitted and, on horizontal lines, by appropriation and in total:

(*a*) The amount expended during the month as shown by copies of vouchers and abstract transmitted;

(*b*) The amount represented by vouchers on hand when the report is transmitted that were not paid during the month closed and included in the "Amount disbursed" (without reference to whether such vouchers, designated in the report as "unpaid," have been examined or whether they have been paid in the meantime); and

(*c*) The estimated additional liabilities then outstanding on account of services rendered, purchases made, or expenses incurred in or prior to the month for which the report is rendered, but for which no vouchers have yet been received;

and on the reverse of which shall appear, in perpendicular columns by appropriation and in total, and in horizontal lines by classes, the classification, required by Treasury Circulars 34 and 36, dated June 21, 1911. On the face of the report those appropriations from which expenditures have been made will be numbered in the order in which they there appear and corresponding numbers (beginning with No. 1 for the left-hand column and using as many consecutive numbers as there are appropriations) will be assigned to the necessary number of columns on the reverse, under the caption "Appropriation," as a means of identifying the appropriation on the face with the classification of expenditures on the reverse.

TRANSMITTING ACCOUNTS

319.[46] *Quarterly accounts.*—All disbursing officers are required by law to render their accounts quarterly and to transmit them to the proper officer at Washington within 20 days after the period to which they relate. Should there be any delinquency in transmitting accounts no further advance of moneys can be made until the reasons for the delinquency have been fully explained to this office and a waiver thereof obtained from the Secretary of the Treasury. (26 Stat. 413; 28 Stat. 209, 807.)

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[45] See Circulars Nos. 828, p. 129, and 866, p. 132.
[46] See Circular No. 1040, p. 143.

Except in those cases in which disbursing officers have specific instructions to transmit certain original papers at an earlier date, each disbursing officer will, as soon as practicable after the close of each quarter and within 20 days transmit in an envelope separate from other matter:

(*a*) All original vouchers paid during the quarter;
(*b*) A quarterly abstract of expenditures listing such vouchers; and
(*c*) An original and duplicate account current for the quarter.

320. "*Other accounts.*"—In case a disbursing officer is required to close his account at a time other than at the close of a quarter (either on account of the execution of a new bond or the termination of his services under the appointment in connection with which he was designated a disbursing officer) he should immediately transmit his report of expenditures, balances, and liabilities (Form 4–163) for the fractional *month* ending with the date on which the account closes and within 20 days after said date he must transmit the original vouchers, original abstracts of expenditures, and original and duplicate account current for the fractional quarter terminating on that date.

NEW BONDS

321. *Account under begins when.*—In case a fiscal officer is required to execute a new bond either on account of a new appointment or of a new designation, his account under his new bond (or under both bonds if the latter is additional or cumulative) will begin on the date of the approval of such new bond by the Secretary. The fact that notice of such approval may not be immediately received by the officer is not material; he is accountable under the old bond for a proper disbursing of and accounting for the funds advanced thereunder and may continue to disburse such funds until he has received notice as to the date of approval of the new bond. This, however, does not change the fact that the account under the new bond must date from the approval thereof, notwithstanding the fact that a failure to receive prompt notice may result in the stating of two accounts for the intervening period, and notwithstanding the fact that no funds may have been received under the new bond until after the first account under such bond is due to be transmitted.

322. *Account under old to be closed.*—Immediately on receipt of notice of the Secretary's approval of a new bond the disbursing officer must deposit his admitted balance then on hand under the old bond, state his final account under such bond, and promptly transmit it to this office. Until the account under one bond is balanced by the deposit to the credit of the Treasurer of the United States of the admitted balance thereunder no advance may be made under a new bond.

323. *What may be paid under.*—The period covered by an account under a particular bond has no relation whatever to the period of service covered by vouchers which he may pay from funds advanced under that bond and, although the accounts under one bond are as separate and distinct from those rendered under another bond as

though the accounts were rendered by separate individuals, a disbursing officer having executed a new bond and received an advance of funds thereunder may pay any voucher made up in prescribed form and chargeable to the appropriations so advanced notwithstanding the fact that part or all of the service represented was performed prior to the date of the new bond.

324. *Difference from old not to be brought into account under.*—Differences found in an account under one bond are in no case to be brought into or taken up in connection with an account under a new bond, or account under old and new bonds when the latter is additional or cumulative. Accounts under a new bond or (when an additional or cumulative bond is furnished) under new and old bonds jointly are as separate and distinct from those rendered under an old bond as though the accounts were rendered by separate individuals.

DIFFERENCES

325. *A claimant's rights.*—Each claimant has a right to have his claim against the United States finally settled in the Treasury Department and must not be denied the right to state his claim in such amount as he thinks is justly due him. Some certifying officers have assumed the right to dictate to a claimant the particular items or amounts he may claim in his voucher. Certifying officers, approving officers, or disbursing officers may advise a claimant as to what will be allowed (and the claimant may if he desires accept these suggestions and state a new voucher), but he must not be deprived of his right to state his claim for what items or amounts seem to him lawful and just. The adjudicating officers will certify or approve such of the items or amounts claimed as are proper, leaving untouched the statements and figures certified by the claimant. No one has any authority to make any changes in the amount certified by the claimant nor to insert any statement of difference over his signature. Suspensions made by a certifying officer or an approving officer should be itemized over their respective signatures, and the suspensions made by a disbursing officer may be made over his signature or by attaching a carbon copy of his letter to the claimant, in which appears an itemized statement of the difference between the amount claimed and the amount of the check issued in payment. In any case an itemized statement of the difference should appear on or be appended to both the voucher and the memorandum copy.

326. *Procedure—Jurisdiction.*—The successive steps in securing payment of vouchers or claims and the gradations of jurisdiction in the adjustment and settlement of claims and accounts are as follows:

The claim shall be:

(*a*) Stated in form and manner hereinabove prescribed;
(*b*) Sent to the proper certifying officer, who may:
    (1) Certify to the voucher as stated,
    (2) Suspend any item or items therein that are not properly stated or properly evidenced, or
    (3) Disapprove any item or items that he knows are not proper;
(*c*) Transmitted to the proper disbursing officer (usually by or through the certifying or approving officer), which disbursing officer may:
    (1) Pay the voucher as presented,
    (2) Pay a part and suspend a part,
    (3) Suspend payment on all and either return the voucher to the claimant for proper statement or forward to this office for instruction or for direct settlement;

(*d*) Claims (unpaid vouchers) transmitted to this office for direct settlement (either through a disbursing officer or by the claimant direct), or accounts of disbursing officers stated and transmitted in accordance with the foregoing instructions, receive here the administrative examination required by law, on which examination the entire account or claim (or any item or items therein) may be:
(1) Approved,
(2) Suspended, or
(3) Disapproved;

(*e*) After which the account or claim is transmitted to the Auditor for the Interior Department for settlement, which officer may (as to any or all items appoved or disapproved by this office):
(1) Allow,
(2) Suspend, or
(3) Disallow;

(*f*) A claimant on a voucher presented for direct settlement may refuse to accept payment on the auditor's settlement and appeal to the Comptroller of the Treasury for a revision of such settlement as to any item or amount disallowed therein, and a disbursing officer may likewise appeal to the comptroller for a revision as to any item or items disallowed by the auditor in his account. (See also paragraphs 193, 331, and 336.)

Items *suspended* by this office are not before the auditor for consideration, and the comptroller has no jurisdiction to revise an account or claim as to any items *suspended* by the auditor.

327. *Accepting check no bar to appeal.*—Any claimant who receives from a disbursing officer in payment of a claim against the Government a check for a lesser sum than the claim stated by him may thereafter present a supplemental voucher for the amount suspended before payment; his acceptance of the check in payment of a claim which has not been settled by the auditor does not bar him from right of appeal. As to acceptance of payment under a settlement by an auditor, section 8 of the act of July 31, 1894 (28 Stat. 208), provides:

> Any person accepting payment under a settlement by an auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which payment is accepted; * * *.

328. *Supplemental voucher.*—New, or supplemental, vouchers must be stated for any amounts claimed on account of differences found before payment, or for items omitted from an original voucher, the employee designating it as supplemental for the particular month to which the expense pertains, and making the voucher as complete in every respect as is required of originals, except that items sworn to in an original voucher need not again be sworn to in a supplemental. As stated in paragraph 269, explanation must be made in connection with supplemental vouchers for items omitted from a voucher for services and traveling and other expenses as to why such items were not included in the original voucher.

329. *Disapprovals.*—Items disapproved by this office will not ordinarily thereafter be approved, but the disbursing officer is under no obligation to concede such items until they have been disallowed by the auditor.

330. *Disallowances.*—Items disallowed by the auditor may not again be considered by that officer within a year from the date of his settlement, nor will they be thereafter reconsidered by him except upon the presentation to him of newly discovered material evidence, and a disbursing officer should, in the first account current rendered after the receipt of an auditor's certificate of settlement,

concede all the suspended items appearing therein for which he does not intend to make further claim, and all items disallowed, or immediately appeal to the Comptroller of the Treasury for a revision of the auditor's settlement as to such disallowed items.

331. *Appeal to the comptroller.*—A decision of the comptroller is final and conclusive upon the executive branch of the Government and an appeal to him carries before him for revision not only the item or items on which the appeal is made but the entire account or claim excepting only such items as have been suspended. A disbursing officer should at once concede all items disallowed by the comptroller on appeal. (See par. 193.)

332. *Answering differences—payees.*—In case a difference is found in an employee's voucher after payment by a disbursing officer the employee should, at the earliest practicable date after receipt through such disbursing officer of notice of a deduction, reimburse the officer for the amount erroneously paid or furnish him with the evidence necessary to relieve the suspension. Answers must in all cases be made within 15 days from receipt of notice, even though the employee may not at that time have received the necessary evidence.

333. *Answering differences—disbursing officers.*—Differences found in the adjustment of accounts by this office, or in the settlement thereof by the auditor, should be taken up by the disbursing officer, at the earliest practicable date, with the office making the deduction and such explanation offered or evidence furnished as will relieve the suspensions, no deposit being made on account of conceded items till the auditor's certificate of settlement covering such items has been received unless the disbursing officer is certain that the item or items can not be allowed. Ordinarily differences found by this office in connection with one account will not again be taken up until the next account is being adjusted, and disbursing officers should transmit answers to differences so that they will be received by that time even though they are not then able to answer all the differences then outstanding. Differences may be answered as long as they are carried by the auditor as suspensions.

334. *Answering differences—Abstract form in duplicate.*—The differences will be taken up in abstract form similar to that followed in the notice of adjustment sent to the disbursing officer, except that the reason for the suspension or disallowance need not be given, a brief statement being made in connection with each item as to whether a perfected voucher is transmitted, explanation offered, or amount conceded. Answers to differences to this office must in all cases be made in duplicate (including letters of explanation furnished by payees or other like evidence supplemental to the principal letter), as the original is transmitted to the auditor and a duplicate is necessary for the files of this office.

335. *Adjusting differences—By deductions from vouchers.*—Unless it is impracticable to do otherwise, a disbursing officer should not adjust a difference found in the adjustment or settlement of his account by deducting the amount from a subsequent voucher presented by the employee; and in case adjustment must be made in that manner the disbursing agent should concede the original disallowance and should claim credit for the full amount of the new voucher, thus in effect applying in payment of the new voucher the amount of over-

payment made to the same claimant on the voucher in connection with which the disallowance was made. A claimant from whose voucher an amount has been deducted on account of a difference found in a former voucher is entitled to state a supplemental claim for the amount so deducted and to have it transmitted through the usual channels for settlement notwithstanding the fact that the amount deducted represents items that have been disallowed by the auditor. (2 Comp. Dec. 4.)

336. *Adjusting differences—By concession in account.*—A debit difference conceded is adjusted by crediting the United States therewith on the face of the account current as "Corrections on account of disallowances conceded," a complete itemized statement of which must appear on the debit side of the cash account. A credit difference concurred in is adjusted by debiting the United States therewith on the face of the account current as "Corrections on account of credit difference, per ———"—(showing the particular certificate or paper by which the difference was found), the specific items of which should appear on the credit side of the cash account. There is one exception as to conceded items appearing in the cash account. In cases where in the auditor's settlement a transfer between appropriations is accomplished by debiting the disbursing officer under one and crediting him under another the adjustment will be made on the face of the account current by crediting the United States under the appropriation in connection with which the debit is found as "Corrections, amount chargeable per auditor's certificate No. ———," and by debiting the United States under the appropriation in connection with which the credit is found as "Corrections, amount credited per auditor's certificate No. ———."

337. *Concessions and deposits distinct.*—The concession of a difference harmonizes the disbursing officer's account with the auditor's settlement so far as that particular difference is concerned. The deposit of an amount conceded is a matter entirely separate and distinct from the action necessary to adjust the difference; an amount, conceded may, if it pertains to an appropriation then current, be carried as cash or deposited to the disbursing officer's official credit, or if it pertains to some fund or appropriation not then current, to his personal credit.

DEPOSITS

338. *Depositing balances at close of fiscal year.*—Unexpended balances of annual appropriations shall be repaid into the Treasury as soon as practicable after the close of the fiscal year for which they were made, and not later than September 30 of each year. Those appropriations that have no fiscal year attached are not annual appropriations and balances thereunder need not be deposited at the close of each fiscal year.

Credit for the amounts deposited should be claimed in the account for the period in which the certificate of deposit is dated. After the balances are deposited any vouchers that may be received chargeable to those appropriations will have to be sent to Washington for settlement. (Treasury Circulars Nos. 133, 1897 and 133, 1903.)

339. *Retain funds to cover liabilities outstanding.*—While it is advisable wherever practicable to complete payment at the close of

business of June 30 of each year for services rendered or expenses incurred during the year then ending, it will not be practicable for most disbursing officers to do this, and, as hereinabove indicated, disbursing officers may complete such payments at any time within the three months after the close of the fiscal year; and it will therefore be necessary, when depositing balances at the end of a fiscal year, to retain in hand (until September 30 unless liabilities are paid before that) sufficient funds from appropriations belonging to the fiscal year just ended to pay outstanding liabilities thereunder.

340. *Overdeposit.*—In case a disbursing officer, at the end of the fiscal year or on closing his accounts, deposits to the credit of the Treasurer of the United States a greater amount than is due, he will simply claim credit in his account current for the amount so deposited (thereby showing a balance due from the United States under one or more appropriations); and on settlement of his account by the auditor, Treasury draft will be issued for the amount found due the disbursing officer, or the amount will be transferred to his credit in the Treasury.

341. *Certificates of deposit to show what.*—Every deposit made by a disbursing officer to the credit of the Treasurer of the United States (personal credit) should show:

(*a*) The title, or titles, of the appropriation or fund to be credited;

(*b*) The date of the bond under which the deposit is made; and

(*c*) A brief reference made as to the character, source of receipt, etc., of such deposits, such as "Balance," "Collections," "Concessions," "Proceeds Government property," etc., the property being listed in detail in connection with the latter.

342. *Duplicate certificates of deposit.*—The same facts should be shown on the duplicate certificate as is required of the original, and, in case any of the required facts are omitted from the original, such facts should be indorsed by the disbursing officer on the reverse of the duplicate certificate; and, in all cases of deposits on account of debit differences conceded, the disbursing officer will list the conceded items in detail on the reverse of such duplicate certificate. On the reverse of each duplicate certificate of deposit on account of "Miscellaneous receipts—Proceeds of Government property" must be indorsed a complete list of the property sold. Duplicate certificates of deposit must in each case, immediately on receipt thereof, be forwarded to this office; and if in any case the disbursing officer is not furnished with a triplicate it will be necessary for him to make a copy for his own files.

343. *Report to Secretary of Treasury on closing account.*—"Whenever any disbursing officer of the United States shall cease to act in that capacity he will at once inform the Secretary of the Treasury whether he has any public funds to his credit in any office or bank, and, if so, what checks, if any, he has drawn against the same which are still outstanding and unpaid. Until satisfactory information of this character shall have been furnished the whole amount of such moneys will be held to meet the payment of his checks properly payable therefrom."—Treasury Circular No. 42, 1907.

CIRCULAR No. 630 [47]

ACCOUNTS—DEPOSITS FOR RESURVEYS, ACT OF SEPTEMBER, 21, 1918

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 13, 1919.

United States Surveyors General and Special Disbursing Agents.

SIRS: In each State wherein there is a surveyor general deposits under the act of September 21, 1918, will be made with the surveyor general; in Nebraska they will be made with the assistant supervisor of surveys, acting as special disbursing agent; in all other States they will for the present be made with Mr. Frank A. Lewis, special disbursing agent, Federal Building, Denver, Colo. Each surveyor general or special disbursing agent will receive and receipt (on Form 4–129) for such moneys as deposits on account of " Special deposits for resurveys, act of September 21, 1918 " (naming the township to be resurveyed), and will deposit the amounts so received to his official credit (certificate of deposit Form 6599) under the title quoted. Disbursements will be made in the usual manner, vouchers for field expenses being paid from " Special deposits for resurveys, act of September 21, 1918 " and " Surveying the public lands " in the proportion that the acreage of privately owned lands in the particular township bears to the acreage of public lands therein; and vouchers for office work in offices of surveyors general being paid in like proportions from " Special deposits for resurveys, act of September 21, 1918 " and " Salaries, offices of surveyor general " or allotments from other appropriations made for the same purpose. In cases where employees are authorized to receive the additional compensation provided by section 6 of the legislative act payment of such amounts will be made from " Special deposits for resurveys, act of September 21, 1918," and " Increase of compensation, Interior Department, 1918," in the proportion that the acreage of privately owned lands bears to the acreage of public lands. Repayments of any excess amounts deposited over the cost of the survey, and the expenses incident thereto, will be made by check to the order of the depositors named in the original receipts or to their legal representatives, the facts as to the deposits, expenditures, balances, and repayments for each township resurveyed being set forth as a separate account on an "Abstract of moneys returned or applied " (Form 4–103d). The date and number of checks for moneys returned should be shown in the " Check number " column and the "Applied " column should be redesignated as " Cost of resurvey," in which the cost may be shown as one total, in the following form:

Date	Receipt No.	Name of depositor	Check No.	Returned to depositor	Cost of resurvey	Total
1918 Oct. 12	7201	John Smith	6/12/19 43209	$3.13		$25.00
	7202	Richard Roe	6/12/19 43210	1.87		15.00
		Resurvey T. 14 N., 17 W., totals		5.00	$35.00	40.00

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[47] See Circular No. 629, p. 1468.

The same facts as to other townships completed may follow on the same abstract, and the total amount of such moneys returned during a quarter will be carried to the account current immediately under the last "Treasury deposit" as "Returned, per abstract." As the township is the unit upon which application and survey must be made and the excess returned, each voucher for expenditures from these deposits should have the township designated thereon.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 47 L. D. 260]

CIRCULAR NO. 664

PRICE OF LANDS WITHIN GRANTED LIMITS OF RAILROAD—PRIOR INSTRUCTIONS REVOKED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 13, 1919.

Registers and Receivers, United States Land Offices.

SIRS: By decision of September 10, 1919, in heirs of Edward B. Baldwin (47 L. D. 258), the department overruled its decision in the case of Even Thorstenson (45 L. D. 96), and in effect its decision in the case of Walter Hollensteiner (38 L. D. 319), and the first paragraph of the instructions of March 2, 1910 (38 L. D. 468).

Pursuant thereto, in collecting commissions and in disposing of lands in odd-numbered sections within the granted limits of a railroad, but excepted from the operations of the grant, the price should be computed at $1.25 per acre, unless a different price is fixed in the granting act or in some other act of Congress.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

CIRCULAR NO. 715

PARAGRAPH 100, CIRCULAR NO. 616, MODIFIED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 2, 1920.

Receivers of Public Moneys, United States Land Offices.

SIRS: The Reclamation Service advises that copies of Form 4–106, "Abstract of Treasury Deposits," are no longer required by that office. Paragraph 100 of Circular 616 is therefore modified accordingly, and you may discontinue to send copies of such abstracts to the Director of the Reclamation Service.

Very respectfully,

C. M. BRUCE, *Assistant Commissioner.*

CIRCULAR No. 733[48]

ACCOUNTS—RECEIPTS UNDER MINERAL LEASING ACT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 22, 1921.

Receivers of Public Moneys, United States Land Offices.

SIRS: Beginning with the month of January, 1921, receivers of public moneys will report promptly at the end of each month receipts on account of rents and royalties under the mineral leasing act (February 25, 1920). This report should be made on an abstract of moneys received (Form 4–103) and should show the same information in connection with each item as will be shown in the regular abstract of moneys received. It will in no way take the place of accounting for such moneys in the usual manner.

When such moneys are applied, instead of being listed on the regular abstract of moneys returned or applied, they should be listed on an abstract of moneys applied (Form 4–103b), with the money columns headed "Receipts under mineral leasing act (February 25, 1920)" or "Receipts under mineral leasing act, naval petroleum reserve lands (February 25, 1920)," as the case may be. The abstract should also show in the right-hand margin, in connection with each item, whether for "Past" or "Future" production. This is necessary because receipts on account of past and future production are distributed differently. Receipts for *past* production refer to the back royalties paid as a condition for "relief" under sections 18 and 19 of the leasing act. All other receipts under the act are for *future* production. (See pars. 18 (h) and 20 B (c), Circular 672.)

The fund titles should be used in accounts current and on certificates of deposit to the credit of the Treasurer of the United States; and the Treasury Department requests that the certificates of deposit shall also show whether the moneys are for "Past" or "Future" production.

Strict compliance with these instructions is necessary to enable this office and the Treasury Department to carry out the provisions of the act with regard to the disposition of receipts thereunder.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 743

ACCOUNTS—RECEIPTS UNDER MINERAL LEASING ACT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 28, 1921.

Receivers of Public Moneys, United States Land Offices.

SIRS: As there no longer appears to be any doubt as to the final disposition of moneys received on account of rents and royalties under the mineral leasing act of February 25, 1920, all such moneys now in your "Unearned money" accounts and hereafter received shall be deposited at once to the credit of the Treasurer of the United States, in accordance with Circular 733 of January 22, 1921.

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[48] See Circular No. 743, p. 126.

As the application of the moneys when received will result in all such receipts being listed in the abstract of moneys applied for the month during which they are received, it will no longer be necessary to furnish the additional abstract of moneys received called for by the above circular.

Very respectfully, William Spry, *Commissioner.*

Circular No. 747

ACCOUNTS—PARAGRAPHS 239 AND 244, CIRCULAR 616, MODIFIED

Department of the Interior,
General Land Office,
Washington, April 7, 1921.

Surveyors General, Supervisors, and Assistant Supervisors of Surveys:

Sirs: By authority of the First Assistant Secretary Circular No. 616 is amended as follows:

After paragraph 239 add:

Each surveyor will be assigned to one of the regularly organized surveying districts, and attached to the headquarters office of the district.

No allowance will be made for subsistence while engaged at official headquarters, nor when absent on leave.

Surveyors will be placed on travel status when assigned to field duty and will be allowed subsistence during such periods as they may be officially employed away from their designated headquarters, subject to the limitations prescribed by law and existing regulations: (1) reimbursement for actual and necessary expense within prescribed limits; (2) meals furnished in a Government-maintained camp; or (3) a per diem in lieu of subsistence, when provision therefor is made in the travel instructions.

After paragraph 244 add:

Surveyors temporarily detailed to the District of Columbia, or to the headquarters office of another surveying district, by proper authority (but not upon the application of the surveyor), will be placed upon continuous travel status, and will be allowed subsistence accordingly, unless, by such authority, the temporary detail be changed to that of a permanent transfer.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 762 [j]

ACCOUNTS—PER DIEM

Department of the Interior,
General Land Office,
Washington, June 27, 1921.

Surveyors General, Supervisors of Surveys, Chiefs of Field Divisions, et al.

Sirs: Beginning July 1, 1921, employees named in paragraph 244, Circular 616, will receive $4 per diem in lieu of subsistence, except in

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[j] See Circular of July 3, 1926, p. 146, and Orders of Aug. 11, 1926, p. 146, Oct. 13, 1928, p. 161, and Aug. 1, 1929, p. 164.

Alaska, where a higher rate is provided. Paragraph 244 of Circular 616 is hereby modified accordingly.

Very respectfully,

George R. Wickham, *Acting Commissioner.*

Approved June 27, 1921.

F. M. Goodwin, *Assistant Secretary.*

Circular No. 802 [49]

ACCOUNTS—BILLS OF LADING

Department of the Interior,
General Land Office,
Washington, January 21, 1922.

Surveyors General, Supervisors, Assistant Supervisors, Registers and Receivers, Chiefs of Field Divisions, and Others.

Sirs: Bulletin 7–C of the Chief Coordinator, General Supply, requires that, effective January 1, 1922, all shipments for account of this office will be reported monthly. This office must make its report by the 10th of the succeeding month, and it will therefore be necessary for all memorandum bills of lading to be promptly transmitted through the usual channels and that surveyors general, assistant supervisors, and others, through whom such memorandum copies come for notation, make their notations promptly and forward the memorandum bills of lading at once.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 813 [50]

REFERENCE TO SERIAL NUMBERS TO BE GIVEN

Department of the Interior,
General Land Office,
Washington, February 27, 1922.

Registers and Receivers, Local Land Offices.

Sirs: Hereafter all letters from this office involving one or more cases will bear the serial numbers of such cases at the top thereof. In your reports thereunder you will refer to all such serial numbers in the upper left-hand corner of your letter in order that all related cases may be assembled upon receipt of your report in this office and properly referred for further action.

Very respectfully,

William Spry, *Commissioner.*

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[49] See Circular No. 207, p. 34.

[50] See Circular No. 1068, p. 1112.

Circular No. 828

ACCOUNTS—REPORTS OF EXPENDITURES

Department of the Interior,
General Land Office,
Washington, May 26, 1922.

United States Surveyors General and Special Disbursing Agents.

Sirs: Beginning July 1, 1922, disbursing officers will not be required to analyze their expenditures on the reverse of their monthly report of expenditures and liabilities (Form 4–163), except as to such amounts as are paid after that date from annual appropriations for the fiscal year 1922. A new classification is required for expenditures beginning July 1, 1922, and that classification will be made in this office. This should enable every disbursing officer to mail his monthly report of expenditures and liabilities promptly and they will be expected to mail them not later than the third day of the following month, as required by paragraph 318 of Circular 616.

Very respectfully,

Geo. R. Wickham, *Assistant Commissioner.*

Circular No. 841

ACCOUNTS—DELINQUENCIES

Department of the Interior,
General Land Office,
Washington, August 1, 1922.

United States Surveyors General, Receivers of Public Moneys and Special Disbursing Agents.

Sirs: The Comptroller General has called attention to the laxness of many fiscal officers of the Government as in the matter of forwarding their accounts within the period allowed by law and asks that all fiscal officers under this bureau be advised that when there is a delinquency in rendering or transmitting their accounts, they must forward with them a letter stating specifically that they were prevented by physical difficulty from dispatching them within the time limit allowed, if such was the cause, and setting forth briefly the conditions which caused such physical difficulty. He also suggests that in cases of delinquency by disbursing officers in connection with which it can not be shown that the deliquency is caused by physical difficulties which made it impossible to transmit the accounts within the period allowed by law, advance of funds be denied in every case. You will govern yourselves accordingly.

Very respectfully,

Geo. R. Wickham, *Acting Commissioner.*

CIRCULAR NO. 860

ACCOUNTS—ACTING REGISTERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 31, 1922.

Registers and Acting Registers, United States Land Offices.

GENTLEMEN: Under act of Congress approved October 28, 1921, the offices of register and receiver have been consolidated in a number of land offices, and a clerk designated in each of such offices to act in case of a vacancy in the office of register by reason of death, resignation, or removal, or in case of inability to act. The Comptroller General, in a decision dated September 7, 1922, held that the law does not provide that the employee designated to act as register shall be a deputy register authorized to act for and in the name of the register, and in a decision dated October 16, 1922, he gives some special instructions concerning accounts rendered by acting registers, which instructions are incorporated herein.

The act does not contemplate that the clerk designated to act will act for a short period, such as the fractional part of a day, when the register is absent for his own convenience, and the designated clerks will not act as register except in cases where there is a real necessity.

Ordinarily all disbursements may be made by the register as special disbursing agent, and it will not be necessary to advance funds to the acting register. In case of a vacancy in the office of register or in case where it is known that the register can not act for a considerable period of time, the acting register should make requisition in the usual way for the necessary funds to pay the expenses of the office. However, if the register has the necessary funds on hand and knows that it will be impossible for him to pay the expenses of the office during his enforced absence, he may check his balance as special disbursing agent, or such amount thereof as will be necessary to meet the expenses of the office during his absence, to the acting register, debiting the United States therewith under the appropriate titles in his account current as " Transferred to acting register." The acting register will deposit the amount to his official credit, credit the United States with the amount in his account current under the same headings and same amounts under each as " Received from register," and pay the expenses in the same manner as though the funds were advanced to him from the Treasury.

Money received by the acting register as such should be receipted for in his own name and deposited to his official credit. He must render monthly and quarterly accounts for all such moneys in the manner and form required as to receivers of public moneys, except that he need not render a monthly account for any period in which there are no fiscal transactions for which he must account.

As far as it is possible, money should be applied by the register rather than the acting register, although the allowance of any entry must not be delayed on this account, and, whenever it is necessary for the acting register to apply moneys in connection with allowed entries, he may apply the amounts from any unearned moneys in his possession without reference to whether they relate to the particular entries. He must, of course, have the necessary funds in hand, and he must know that the claimant whose entry is allowed has the necessary money on deposit either with the register or acting register.

The register will show in the "Abstract of moneys received" (Form 4–103), all amounts received by himself or the acting register during the period for which his account is rendered, but will show in parentheses all amounts received by the acting register. The amounts shown in parentheses will not be included in the totals, and will, therefore, not be carried to the register's account current, but he will show in parentheses the total of all items appearing on the abstract. He is not accountable for the items, but they enter into his earnings and are needed in a single statement for statistical purposes. A new abstract of moneys received having two amount columns (one to show the amounts received by the register and the other to show the amounts received by the acting register), will be provided at an early date, and thereafter the register may show the acting register's amounts in the designated column and omit the parentheses.

Unless there is a vacancy in the office of register, the acting register will ordinarily be able to balance his account as acting register at the end of each month, and his account as special disbursing agent at the end of each quarter, and this he may do by drawing his check in favor of the register for the amount of his admitted balance at the close of the period. He will debit the United States in his account current with the amount of this check as "Transferred to register," and the register will credit the United States in his account current with the same amount under the appropriate titles as "Received from acting register." At the close of the fiscal year (unless there is an actual vacancy in the office of register), the acting register will transfer to the register by check his admitted balances under all appropriations, and will not make any payments for a fiscal year after the close thereof unless specially authorized.

Whether the clerk designated acts as register for a short period, for a long period, or for several periods during the quarter, his accounts will be due to be transmitted within 20 days after the end of the quarter, in the same manner as though he were the fiscal officer for the full period, and, beginning with the date on which he is first qualified to act as a fiscal officer, he must render an account at the close of each quarter whether he had funds on hand or not.

An acting register may not use the register's symbol numbers and may not, therefore, deposit money nor draw checks until he has been assigned symbol numbers of his own. These symbol numbers will be assigned at an early date, and as soon as possible thereafter each clerk designated to act as register should make requisition (on Treasury Forms 1231 and 1231a, in duplicate), for check books bearing such symbol numbers for their use as acting registers. They are not authorized to use the register's blank checks, but if an emergency arises before an acting register has received his checks, he may draw a line through the register's symbol number, insert his own, and so use the register's blank checks.

In case one acting register is succeeded by another, he may deliver his unused checks to his successor taking his receipt therefor and advising the chief of printing and stationery, Treasury Department, of the fact, giving date, check numbers, and the name of the party (with symbol number if possible), to whom they are delivered. The successor may use checks on which symbol numbers have not already been changed by scratching out the printed symbol and inserting his own.

Very respectfully,

GEO. R. WICKHAM,
Acting Commissioner.

CIRCULAR No. 866

ACCOUNTS—CLASSIFICATION OF EXPENDITURES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 14, 1922.

Approving Officers and Special Disbursing Agents.

SIRS: General Accounting Office Bulletin No. 1, dated May 11, 1922, requires that beginning with July 1, 1922, accounts shall be so kept as to permit the segregation of expenditures in accordance with a prescribed classification. This classification is to be made in this office from memorandum copies of vouchers and it is therefore necessary that such memorandum copies be itemized in such a way as to permit a proper classification therefrom.

Memorandum vouchers received during the first quarter, 1923, contain such expressions as "supplies," "expenses," "storage and repairs," "gas, oil, and storage," "gas and repairs," "gas and equipment," "storage and labor," and "supplies and parts." Some of these expressions may include items belonging to six different classes and any one of the items may include amounts belonging to as many as three classes. Gasoline is classified as fuel, oil is classified as a lubricant, and repairs take a separate classification. Therefore, a voucher containing such an item as gas, oil, and repairs $9.38 should take some such form as

Gas ($4.35), oil ($1.25), and repairs ($3.78)	$9.38

All expenses for purchase, operation, or maintenance of Government-owned passenger-carrying vehicles must be shown separately. All vouchers, therefore, containing any such expenses should indicate clearly that the expense is for a Government-owned car, giving the number of the car. In fact, any expense pertaining to any Government car should be identified with the car by having the car number noted on the voucher, as "FS' No. 16," or "Truck No. 9."

Please see that all vouchers hereafter shall be so prepared as to permit a correct classification.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

CIRCULAR NO. 877

ACCOUNTS—DEPOSITS—MODIFICATION OF PARAGRAPH 84, CIRCULAR NO. 616

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 7, 1923.

Registers and Receivers, United States Land Offices.

GENTLEMEN: It is quite evident that Treasury regulations concerning prompt deposit of public moneys are not being strictly complied with, and as paragraph 84, Circular No. 616, is not very specific on this matter, the following instructions are given:

The requirement in Treasury Circular No. 105a, 1917, that receivers of public moneys living in the same city or town with a duly authorized depositary must deposit their receipts at the close of the day has reference to the close of the banking day and, so far as national bank depositaries are concerned, refers only to *cash* receipts, that is currency, coin, post-office money orders, and express money orders, all of which are considered as cash, and are to be deposited in the form received.

Treasury Circular No. 176, 1922, is more specific and directs that all cash received shall be deposited with the general national bank depositary (if there is one in the same town), and that checks (and this includes bank drafts if such paper is accepted) shall be forwarded for deposit each day to the Federal reserve bank of the district in which the register's or receiver's office is located.

Particular attention is called to the fact that checks must be forwarded for deposit each day to the Federal reserve bank of the district; they are not to be deposited with nor forwarded to a national bank depositary, and are not to be deposited with Federal reserve branch banks unless such branch bank is located in the same town with the depositor. That is, the only officers authorized to deposit checks with any bank other than the Federal reserve bank are those located at Little Rock, Los Angeles, Denver, Helena, Portland, Salt Lake City, Seattle, and Spokane.

The officers located in those towns must deposit cash and checks daily with the local Federal reserve branch bank and the receiver at San Francisco must deposit cash and checks daily with the Federal Reserve Bank of San Francisco.

Cash received by officers in towns where there are national bank depositaries but no Federal reserve bank or branch banks must be deposited daily with the designated depositary and checks received at those offices must be forwarded for deposit daily to the Federal reserve bank of the district, as must also checks received in the offices in towns where there are neither Federal reserve banks, branch banks, nor national depositaries.

Permission to hold deposits until they amount to approximately $500 is only granted to those receiving officers who are located at a distance from a national bank or other designated depositary.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved March 7, 1923.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR No. 882

ACCOUNTS—DEPOSITING DISBURSING BALANCES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 20, 1923.

Surveyors General, Registers and Receivers, and Special Disbursing Agents.

SIRS: Treasury Department Circular No. 281, 1922, from which the following extracts are quoted requires all disbursing officers—

> when making deposits to the credit of the Treasurer of the United States, with Federal reserve banks and branches, the Treasurer of the United States, or a designated depositary of public moneys, to separate from all other classes of deposits those which return to the Treasury unexpended balances from funds advanced upon accountable warrants issued upon requisitions, or received as a transfer of funds from an officer to whom the funds were originally advanced.
>
> Such separate deposits should be made when disbursing officers deposit unexpended balances of current annual or other appropriations during or after the close of the fiscal year, and when a disbursing officer resigns or otherwise leaves the service, or when he renews his bond or gives a new bond.
>
> In transmitting for deposit official checks drawn on the Treasurer of the United States, exclusively representing such unexpended disbursing balances, disbursing officers will make special request in each case in the letters of transmittal that the certificates of deposit issued therefor state clearly that the amounts thereof represent "Unexpended disbursing balances repaid to the Treasury for credit to appropriations named and from which advanced."
>
> All checks drawn on the Treasurer of the United States which return to the Treasury unexpended disbursing balances should be deposited either with the Treasurer of the United States or with Federal reserve banks or branches, and not with other depositaries.

The circular indicates that deposits of *cash* on account of unexpended disbursing balances may be made with a local national bank depositary (with the same requirement as to their being kept separate, and as to what the certificates shall show) but that if such cash is first deposited to official credit with the Treasurer the above-quoted instructions apply.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

CIRCULAR No. 885

REGISTERS' RETURNS TO BE MADE SEMIMONTHLY. CIRCULAR NO. 616 AMENDED. CIRCULAR NO. 621 ABROGATED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 28, 1923.

Registers and Receivers, United States Land Offices.

GENTLEMEN: The instructions contained in paragraphs 40 to 53, inclusive, of Circular No. 616 approved August 9, 1918 (46 L. D. 513), are hereby amended as follows:

Beginning April 1, 1923, you will transmit your returns of business semimonthly. All business for the first half of the month (1 to 15, inclusive), will be forwarded not later than the third working day after the 15th, and all business for the last half of the month will be forwarded not later than the third working day of the succeeding month, excepting, of course, filings which are required to be held in your office for a definite period, those suspended pending action upon petitions for designation of the lands applied for, and rejected applications, proofs, etc., held during the period allowed for appeal. In other words, all filings which are complete so far as your office is concerned on the 15th or last day of the month, except such as are to be sent up special, shall be forwarded to this office semimonthly.

All returns must be accompanied by the general schedule of serial numbers, schedule of allowances and all classified schedules. Where the serial numbers assigned during the month are not more than a page, the general schedule of serial numbers submitted with the returns for the last half of the month must be a complete schedule for the month. This will necessitate in such cases the rewriting of the schedule for the first half of the month but will reduce the number of pages of the general schedule and conserve space.

It will not be necessary hereafter to prepare a " summary " for the schedule of allowances but the body of the schedule will be totaled as to number, area, and amount.

Copies of the schedules furnished chiefs of field divisions and district foresters under paragraphs 51 and 52 of Circular No. 616 will be transmitted to said officers semimonthly.

Paragraph 44 (h), Circular No. 616, is hereby amended to read as follows: " Suspended final proofs, proofs protested by Forest Service and chief of field division, and all suspended original applications, except those filed in accordance with the leasing act of February 25, 1920 (on Form 4–115)." In the remarks column show reason for suspension and if transmitted by special letter, date of such transmittal. This schedule will be headed " Suspended Applications and Proofs," instead of " Protested Proofs," as at present.

The returns for the first half of the month must also be accompanied by the memorandum copies of receipts (Form 4–131) issued during the period, and, in addition to the copies now furnished, an extra copy of the abstract of moneys returned or applied (Form 4–103a) and of the abstract of moneys applied (Form 4–103b). Before transmitting the memorandum copies of receipts you will prepare (but hold in your office) the abstract of moneys received (Form 4–103), said abstract and the applied abstracts to be completed at the end of the month, in duplicate, and mailed in the usual manner. Your accounts will be submitted at the end of the month or quarter in the same manner and form as heretofore, except that the memorandum copies of receipts will cover only the last half of the month. Should the corresponding portion of the applied abstracts as submitted at the end of the month differ in any respect from the copies accompanying the returns for the first half, report of same must be attached to the monthly account.

To expedite the transmittal of the semimonthly returns, you should get them ready from day to day, or every few days, so that it will not be necessary to do all the work at the end of the period. The general schedule of serial numbers (with the exception of the remarks column), the abstract of moneys received, the abstract of moneys returned or applied, and the abstract of moneys applied should be typewritten every few days or as often as the items fill a page. Such practice will help considerably, especially in the larger offices. The schedule of allowances and the classified schedules can not of course be prepared until the end of the period.

Circular No. 621 dated October 9, 1918, requiring the transmittal at the end of each week of withdrawals of applications to enter, is hereby abrogated, and you will hereafter include all such withdrawals with your returns. In connection with such withdrawals, also withdrawn applications and withdrawn final proofs, you will return by your official check all moneys returnable under paragraph 85 of Circular No. 616 and note on the paper transmitted, with pen and ink or rubber stamp, the amount, check number, and date.

Very respectfully,

William Spry, *Commissioner.*

Approved.

Hubert Work, *Secretary.*

[Reported, 50 L. D. 133]

Circular No. 904

FEES FOR CARBON COPIES OF TESTIMONY IN CONTEST CASES

INSTRUCTIONS OF MAY 28, 1910 (38 L. D. 615) MODIFIED

Department of the Interior,
General Land Office,
Washington, September 10, 1923.

Registers and Receivers, United States Land Offices.

Sirs: When the reducing of testimony to writing in a contest case is done by regularly appointed employes of your office, carbon copies may be furnished at the rate of 5 cents per page, irrespective of the number of words or figures thereon.

If the testimony is reduced to writing by a clerk employed under authority of the circular of February 15, 1909[51] (37 L. D. 448), such clerk will be allowed to make a charge of not exceeding 3 cents per hundred words for carbon copies, to be collected by him from the party to whom the same is furnished.

Very respectfully,

William Spry, *Commissioner.*

Approved September 10, 1923.

E. C. Finney,
First Assistant Secretary.

Circular No. 907

ACCOUNTS—VOUCHERS FOR PAYMENT BY SPECIAL DISBURSING AGENTS

Department of the Interior,
General Land Office,
Washington, December 4, 1923.

Chiefs of Field Divisions, Special Disbursing Agents:

In order to relieve the special disbursing agents of the work incident to the payment of a volume of small vouchers, you will hereafter include auto hire, livery, and other like expenses amounting to less than $10 in vouchers for services and traveling and other expenses and will not certify such vouchers to disbursing officers for payment unless they amount to $10 or more.

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[51] The substance of these instructions is incorporated in sub-par. 5, par. 125, Circular No. 616, p. 76.

Very respectfully,

William Spry, *Commissioner.*

ACCOUNTS—WAGES OF TEMPORARY FIELD ASSISTANTS

Department of the Interior,
General Land Office,
Washington, February 28, 1924.

United States Supervisor of Surveys, *Denver, Colo.*

Sir: Your statement of the conditions adversely affecting the employment of field assistants in surveying parties * * * makes necessary some modification of existing regulations governing wages paid to this necessary group of employees * * *.

* * * * * * *

You are hereby authorized to pay temporary field assistants wages from $60 to $75 per month each.

In the few localities where labor conditions prevent the employment of assistants at these wages you are authorized to pay additional thereto not to exceed $10 per month each.

The instructions contained in paragraph 254, Circular 616, except as the same relates to Alaska * * * are hereby revoked.

Very respectfully,

William Spry, *Commissioner.*

Approved.

E. C. Finney, *First Assistant Secretary.*

[Reported, 50 L. D. 323]

Circular No. 923 [52]

AMENDING PARAGRAPH 282, CIRCULAR NO. 616

Department of the Interior,
General Land Office,
Washington, March 22, 1924.

Chiefs of Field Divisions, Hearings Officers, and Hearings Clerks, and Special Disbursing Agents.

Sirs: Effective April 1, 1924, paragraph 282, Circular No. 616, is hereby amended to read as follows:

282. *Authorization for expenditure.*—At least two weeks before the beginning of each quarter Chiefs of Field Division will submit quarterly estimates in triplicate on Form 4–638a and allotments will be made by the approval and return of a copy of the estimate. Schedules of hearings (Form 4–638) will still be required, but the amount column will be left blank. Supplemental estimates may be submitted when necessary, but they must be plainly marked

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[52] Amended by Circular No. 1033, p. 143.

"Supplemental" and should be avoided whenever possible, and any excess of allotments over the amount needed to the close of a fiscal year must be promptly reported so that the amount may be released for allotment to other divisions. Disbursing officers are not authorized to pay any hearings voucher unless it bears the initials, in the blank space under the certifying officer's certificate, of the chief of division or of an employee designated by him as hearings clerk, and the placing of such initials on a voucher shall be construed as a certificate by the one whose initials are so placed that the amount of the voucher added to all the other vouchers theretofore certified for services of that fiscal year does not exceed the amount allotted to that division for the period.

Very respectfully.

William Spry, *Commissioner.*

Approved March 22, 1924.

E. C. Finney, *First Assistant Secretary.*

COMPENSATION OF FIELD ASSISTANTS IN ALASKA

[Telegram]

Department of the Interior,
General Land Office,
Washington, May 9, 1924.

Supervisor of Surveys, *Denver, Colo.*

Your wire eighth. Authorized increase $15 per month present rates compensation field assistants, Alaska. Paragraph 254, Circular 616, amended accordingly.

Approved May 9, 1924.

E. C. Finney,
First Assistant Secretary.

Circular No. 955

ACCOUNTS—NEW FORM OF PAY ROLL

Department of the Interior,
General Land Office,
Washington, July 29, 1924.

Registers and Receivers, Surveyors General, Other Certifying Officers and Special Disbursing Agents.

Sirs: General Accounting Office General Regulations No. 34, dated May 19, 1924, prescribes a new standard form of pay-roll voucher for use of all departments, bureaus, and offices, and in Supplement No. 1 thereto prescribes a "Short form" thereof referred to as "Standard Form 1013d," with a memorandum copy designated as "Standard Form 1013e," of which forms a supply has been mailed you.

The Comptroller General advises that these standard forms of pay roll are prescribed for general use throughout the Government service "on and after July 1, 1924, in lieu of those issued for like purposes which have heretofore been approved."

He adds the following instructions:

> The rate of salary for the period of the pay roll and the gross amount earned are not necessarily the same, and from said rate there should be

deducted any amount representing leave without pay or other nonpay status, in order to determine the "gross amount *earned*."

Where the "gross amount earned" is made up of amounts from two or more appropriations, the items will be stated in a subcolumn in the "Name, designation, and annual salary" column, adjoining the "Gross amount earned" column, opposite the name of the employee concerned, each item bearing the proper symbol and being arranged so that the total may be readily computed and carried to "Gross amount earned."

Very respectfully,

GEO. R. WICKHAM, *Acting Commissioner.*

Approved July 29, 1924.

E. C. FINNEY, *First Assistant Secretary.*

CIRCULAR No. 982

ACCOUNTS—APPROVAL OF VOUCHERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 14, 1925.

Division Inspectors and Special Disbursing Agents.

GENTLEMEN: I find that the approval of vouchers by some of the division inspectors is often perfunctory and that the signature does not necessarily indicate that the voucher has been given a careful examination. Hereafter it will be expected that each approving officer will before approving a voucher give it such an examination or require such an examination to be given by some one under his supervision as shall insure that the voucher is in proper form, properly signed, extensions carefully carried out, and all expenses represented duly authorized.

The purpose of a disbursing officer is to make payments and make them promptly and the audit of vouchers or the administrative examination thereof should not be made a part of his duties.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

CIRCULAR No. 985

ACCOUNTS—PARAGRAPH 233, CIRCULAR NO. 616

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 17, 1925.

Supervisor of Surveys, Assistant Supervisors, Division Inspectors, and Special Disbursing Agents.

GENTLEMEN: In promulgating Circular No. 973 with the purpose of amending paragraph 233, Circular No. 616, it was not the intention to place a limit of $20 per day on boat hire or hire of transportation in Alaska, and the said paragraph is, therefore, hereby amended to read as follows:

> 233. *Special conveyances.*—Hire of special conveyances, such as taxicabs or other automobiles, livery, or boat, only when no public or regular means of transportation are available and the necessary incidental expenses connected

therewith, such as feed and stabling of horses and the subsistence of driver, ferriage, and tolls. Also services of and subsistence of guide when no driver is employed. If the charges for special conveyance include feed and stabling of horses and subsistence of driver, or any such items, the principal voucher or subvoucher must so state. Competition should be invited in connection with the hire of special transportation, especially if services are to be continued for any considerable period, and if in rare instances it is necessary to exceed a rate of $20 per day, except in Alaska, the excess amounts must not be paid until full explanation has been submitted to the commissioner and received his approval.

Very respectfully,

William Spry, *Commissioner.*

Approved March 17, 1925.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 148]

Circular No. 1008

ACCOUNTS—FORMS OF REMITTANCES

Department of the Interior,
General Land Office,
Washington, May 20, 1925.

Registers and Receivers, United States Land Offices.

Gentlemen: By direction of the Secretary of the Interior, paragraph 72 of the regulations (Circular No. 616), approved August 9, 1918 (46 L. D. 513, 531), which restricts the forms of remittances that may be accepted by receivers of public moneys to cash, currency, certified checks, and postal money orders is hereby amended to permit the acceptance of uncertified checks and bank drafts that may be cashed without cost to the Government, and the last sentence of the paragraph, " Receivers must not accept or issue receipt for remittances tendered in any other form," is hereby revoked.

Upon receipt of notice that a check or draft, whether certified or uncertified, is uncollectible, the receiver should at once notify the General Land Office so that appropriate action may be taken on the matter in connection with which the dishonored check or draft was tendered.

Very respectfully.

William Spry, *Commissioner.*

Circular 1023

CIRCULAR NO. 996 AMENDED AS TO COST KEEPING

Department of the Interior,
General Land Office,
Washington, July 28, 1925.

To the Surveying Service of the General Land Office:

Circular No. 996, dated April 7, 1925, under the title " Accounts," directs that vouchers to be paid by the special disbursing agent under the centralization plan will be sent to the district cadastral engineer, through the office cadastral engineer, in whose office the vouchers will be posted on his cost-keeping record. The new accounting and cost-keeping system now being installed in the General Land Office and the office of the supervisor of surveys at Denver contemplates that the cost keeping referred to shall be done in the office of the supervisor of surveys.

Circular No. 996 is therefore hereby amended accordingly and cost keeping in the offices of cadastral engineers is discontinued.

Very respectfully,

William Spry, *Commissioner.*

Approved July 28, 1925.

E. C. Finney, *First Assistant Secretary.*

Circular No. 1030

ACCOUNTS—AUTHORIZATION

Department of the Interior,
General Land Office,
Washington, September 9, 1925.

Purchasing Officers and Special Disbursing Agents.

Gentlemen: Hereafter letters of authorization will ordinarily bear an authority number stamped immediately following the word "authorization" when the form letter is used, and in a relatively like position when letter heads are used. Telegraphic authority will ordinarily be confirmed by mailing a copy of the telegram with the number stamped thereon.

In citing authorizations so numbered the number, instead of letter initial and date, will be indorsed on the voucher. That is, instead of saying "Authorized by office letter A of July 11, 1925," the citation will be "Authorized by authority No. 52."

So far as is practicable, purchasing officers will be advised as to the authority numbers assigned to 1926 authorizations already issued, the originals of which have been sent out without the numbers stamped thereon.

Very respectfully,

Thos. C. Havell, *Acting Commissioner.*

Circular No. 1032

ACCOUNTS—STANDARD ACCOUNTS CURRENT

Department of the Interior,
General Land Office,
Washington, September 21, 1925.

Registers and Special Disbursing Agents.

Gentlemen: The Comptroller General, by General Regulations No. 41, dated March 7, 1925, states:

> Standard forms of account current for use of disbursing and collecting officers, clerks, agents, and other officers of whatever title, disbursing and collecting moneys on account of the United States in rendering their accounts to the

General Accounting Office, are hereby prescribed and published for general use throughout the Government service effective with the accounts for the fiscal year beginning July 1, 1925, in lieu of all others which have heretofore been approved for like purposes by the Comptroller of the Treasury or the Comptroller General of the United States,

and names four forms, of which the one designated as Form 1020, size 14″ by 8½″ is to be used by the officers and employees under this office.

Such of the rest of the circular as is of interest follows:

Provision has been made on Form 1020 for showing opposite each appropriation, fund, or account title, the balance due from last account and receipts on the one hand, and payments and balance due the United States at close of period on the other, each of which should equal the same total, to be placed in the "Total" column between the two sides of the account.

The total only of each accounting item indicated by the columnar headings will be placed opposite the proper appropriation or other title as the "Analysis of Account Totals" on the reverse side of the account current provides space for scheduling accountable warrants, Treasury deposits and transfers of funds. Separate detailed schedules of collections and disbursements must be furnished as heretofore, only the totals thereof being included in the "Analysis of Account Totals." When more than one sheet is required the headings will be filled in with the notation "First Sheet," "Second Sheet," etc., placed on the forms just above the words "Account Current" appearing thereon. The totals of the accounting items, the officer's certificate and the information and certificates called for on the reverse side of the account current will be shown on the final sheet.

Disbursing and collecting officers, agents, and others in preparing their accounts will observe the following arrangement of accounting items and appropriation and fund accounts. Account titles will be listed in the following order: Appropriations, trust funds, miscellaneous receipts, and special deposits when their inclusion is authorized. The total balance due the United States for each of these groups, where more than one item is involved, will be entered in the "Balance Due the United States" column, on a separate line following the last entry of each group.

There has been provided on the reverse side a suitable brief or space for notations of inclosures which should always be carefully made to enable the administrative office and the General Accounting Office to ascertain immediately upon receipt of the accounts whether the papers specified have been forwarded. Such notations should be concise but specify clearly the kind and number of papers, for example: Account Current, Schedule of Collections (2 sheets, 6 receipts), Schedule of Disbursements (10 sheets), etc.

The Comptroller General has held concerning registers who are also special disbursing agents that there is no statutory requirement that separate bonds be executed (one as register and another as special disbursing agent) and that, a satisfactory bond being filed, the rendering of a consolidated account thereunder is authorized. Some officers have already filed such bonds and, as rapidly as may be, others will be required to file the new form of bond covering both classes of duties and thereafter only one symbol number will be assigned, and only one series of checks used. In the meantime all such officers will show the dates of both bonds, both symbol numbers, and both titles on the one form (giving the register's first in each instance) and will bring all fiscal transactions for the quarter into a single account current.

As a guide in the matter, it is planned to furnish each register an account current showing the manner in which his fiscal transactions for the months of July and August would appear in a quarterly account current.

Very respectfully,

Thos. C. Havell, *Acting Commissioner.*

CIRCULAR NO. 1033

AMENDING CIRCULAR NO. 923

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 26, 1925.

Division Inspectors, Hearings Officer, Hearings Clerks, Special Disbursing Agents.

SIRS: By Circular No. 923 of March 22, 1924, it is required that all vouchers for expenses of hearings in land entries shall be initialed by the division inspector or by some clerk designated by him as "hearings clerk." This requirement is for the purpose of making sure that no voucher is paid without being charged against the allotment for hearings expenses of the proper division.

It is called to the attention of this office that vouchers have been returned for initialing when certified by the division inspector, resulting in unnecessary delay in payment. As the signature of the division inspector is evidence that the voucher has passed through his office, vouchers need not bear his initials or those of the "hearings clerk" when certified or approved by him.

Very respectfully,

THOS. C. HAVELL, *Acting Commissioner.*

CIRCULAR NO. 1040

ACCOUNTS TO BE RENDERED MONTHLY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 9, 1925.

Registers and Acting Registers, United States Land Offices, and Special Disbursing Agents.

GENTLEMEN: Beginning with the month of October all accounts shall be rendered monthly instead of quarterly.

Monthly accounts current shall be stated, in duplicate, and mailed to this office not later than the 10th of the following month, accompanied by the necessary abstracts and schedules, also in duplicate, supported by the necessary vouchers and memorandum copies of receipts. In other words, each monthly account must be complete in itself, so that the original account current, abstract, schedules, vouchers, and memorandum receipts may be forwarded to the General Accounting Office and a copy of everything but the memorandum receipts retained in this office.

It is no longer necessary for abstracts to show a recapitulation or summary of business for prior months. The abstract for each month will be complete in itself and will show only the business for that month. Likewise as to the accounts current now stated by registers and acting registers at the end of each quarter. The account current at the end of the quarter, like those submitted for the first two months of the quarter, will be for one month only, the last month of the quarter.

The monthly report of disbursements and liabilities (Form 4–163), accompanied by memorandum vouchers, must be forwarded promptly within three days after the close of each month as heretofore.

As this circular will not reach you until after the 10th of the month, the 10-day limitation will not apply to rendering the account for October, but accounts for that month must be forwarded as soon as practicable.

Very respectfully,

William Spry, *Commissioner.*

Approved November 9, 1925.

E. C. Finney, *First Assistant Secretary.*

Circular No. 1060 [53]

INSTRUCTIONS RELATIVE TO NUMBERING CONTRACTS

Department of the Interior,
General Land Office,
Washington, April 10, 1926.

A uniform system of numbering contracts throughout the Government service has been adopted by the General Accounting Office, commencing with the making of contracts for the fiscal year 1927. The system provides for the use of symbols to represent each department, its bureaus, and separate administrative subdivisions. In accordance with this plan the General Land Office service has been divided into four groups, to which symbols have been assigned as follows:

Washington, D. C	I1g–
Cadastral engineering service	I2g–
Inspection service	I3g–
District land office service	I4g–

Each group will number its own contracts. In order to avoid duplication of numbers a central numbering agency is hereby established for each group as follows:

Washington, D. C	Chief clerk's office.
Cadastral engineering service	Office of supervisor of surveys, Denver, Colo.
Inspection service	Disbursing officer, inspection service, Salt Lake City, Utah.
District land office service	General Land Office, Washington, D. C.

Commencing with the fiscal year 1927 all formal contracts originating in each group will be forwarded to its respective central numbering agency so that they may be properly numbered before being transmitted to this office for approval.

Contracts will be numbered consecutively in the upper right-hand corner, in the order received in the central numbering office. The symbol will be placed first and the contract number after the symbol, separated therefrom by a hyphen, commencing with number one and continuing in succession indefinitely without reference to fiscal years, the combination of symbol and contract number forming a complete symbol number for each contract by which its origin may be readily identified.

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[53] Amended by Circular No. 1137, p. 152.

Examples:

I2g–1.—First contract from cadastral engineering service.
I3g–1.—First contract from inspection service.
I2g–2.—Second contract from cadastral engineering service.
I3g–15.—Fifteenth contract from inspection service.

Under existing regulations a formal contract must be made for all transactions involving an expenditure of over $100. Commencing with the making of contracts for the fiscal year 1927, a formal contract will be made for all transactions involving a series of payments over a period of time, such as telephone service, garage rent, etc., notwithstanding the fact that the aggregate expenditures thereunder will amount to less than $100.

All formal contracts must be numbered in the manner above outlined and forwarded to this office separate from the vouchers, but less formal agreements, such as proposal and acceptance, involving an expenditure less than $100, where payment in full is made on a single voucher, will not be numbered. All papers in connection with such latter agreements will be forwarded to this office attached to the vouchers to which they pertain.

Appropriate records will be set up and maintained in each central numbering office to put the new system of numbering contracts into effect and avoid duplication of numbers.

William Spry, *Commissioner*.

Circular No. 1069

COMMISSIONS ON INDIAN LANDS

Department of the Interior,
General Land Office,
Washington, June 9, 1926.

Registers, United States Land Offices.

Sirs: By decision dated May 28, 1926 (No. A–13776), the Comptroller General holds that registers of local land offices are not entitled to the commissions of 2 per cent on the cash price paid in connection with homestead entries on ceded Indian lands, when the regular fees and commissions are paid by the homestead applicant.

Therefore, beginning with the month of June, registers will be allowed in connection with such entries only the commissions provided by paragraphs 3 and 12 of section 2238 of the Revised Statutes, namely, 2 (3 in the States named in paragraph 12) per cent on $1.25 per acre at time of entry and a like commission when final proof is submitted, to be paid by the homestead applicant.

Very respectfully,

William Spry, *Commissioner*.

PER DIEM IN LIEU OF SUBSISTENCE

Department of the Interior,
General Land Office,
Washington, July 3, 1926.[k]

Field Employees of the General Land Office.

Sirs: By act of Congress approved June 3, 1926, known as the "Subsistence Expense Act of 1926," heads of departments and establishments of the Government are authorized to prescribe a per diem in lieu of subsistence of not to exceed $6 ($7 in Alaska). The act provides, however, that the fixing and payment of such per diem allowance shall be in accordance with regulations which shall be promulgated by the heads of departments and establishments and which shall be standardized as far as practicable and shall not be effective until approved by the President.

Until the necessary regulations are promulgated by the Secretary of the Interior and approved by the President employees of the General Land Office, except when otherwise specifically authorized, will be allowed the same per diem in lieu of subsistence as during the last fiscal year.

Very respectfully,

William Spry, *Commissioner.*

Order No. 158½

ACCOUNTS—PER DIEM—TRANSPORTATION REQUESTS

Department of the Interior,
Washington, August 11, 1926.[l]

Heads of bureaus and offices are hereby authorized to issue all travel orders required for the use of the employees of their respective bureaus and offices placed in a travel status. Per diem in individual cases in excess of $4 per day should be approved by the Secretary. Necessary transportation requests can be procured from the division of publications of the Secretary's office, and will be accounted for under existing regulations.

Hubert Work, *Secretary.*

Circular No. 1091

ACCOUNTS—STANDARD PURCHASE VOUCHER

Department of the Interior,
General Land Office,
Washington, August 23, 1926.

Certifying Officers and Special Disbursing Agents.

Sirs: By General Regulations No. 51, dated June 18, 1926, standard forms are prescribed for general use throughout the Government service, effective July 1, 1926, in lieu of all others which have heretofore been approved for like purposes, as follows:

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[k] See Orders of Aug. 11, 1926, p. 146, Oct. 13, 1928, p. 161, and Aug. 1, 1929, p. 164.
[l] See orders of Oct. 13, 1928, p. 161, and Aug. 1, 1929, p. 164.

Public voucher (original) for purchases and services other than personal (Form 1034); memorandum voucher (Form 1034a); first and follow sheet of original voucher (Form 1035); memorandum thereof (Form 1035a); and abstract of agreement (Form 1036).

The Comptroller General states that these forms are designed to be used generally for vouchering all demands against the Government involving expenditures other than for personal services and kindred expenditures heretofore vouchered on public voucher forms for services other than personal, and that they will be used for vouchering disbursements accounted for in special deposit accounts.

Except as hereinafter provided, the original voucher must be signed and certified to by the payee, or by his duly authorized agent, and by the proper administrative officer of the department or establishment concerned who is cognizant of and may truthfully certify to the facts stated in the voucher.

If a payee submits for payment an invoice or bill on which is contained the certificate, duly signed, "I certify that the above bill is correct and just, and that payment therefor has not been received," or words to that effect, said invoice or bill may be accepted, if it constitutes a valid claim against the Government, and fastened securely to the voucher (Standard Form 1034), in lieu of stating the invoice or bill in detail and securing the payee's certificate thereon, the voucher to be otherwise completed in due form.

Wherever it is practicable and desirable so to use dealers' invoice or bills, it is desired that, in the interest of uniformity of evidence furnished, size of form, and widespread acceptance of same in the commercial world, payee be requested to submit their bills on the National Standard Invoice Form to the fullest extent possible, to be duly attached to and become a part of their vouchers.

The administrative certificate on the voucher (Standard Form 1034) is a receiving certificate; that is, it is evidence of the receipt and acceptance of the articles purchased or services performed, either under some form of written agreement as to which the contracting officer has certified on Standard Form 1036 or without written agreement under the circumstances stated in the certificate. When the contracting officer and the receiving officer are the same person, he will sign both certificates.

The memorandum voucher (Standard Form 1034a) is identical in form with the original voucher (Standard Form 1034), except that the word "memorandum" is printed in light-line letters across its face, the words "do not sign" or "memorandum—do not sign" appear opposite all spaces intended for signature on the original voucher; the memorandum will be printed on yellow paper. The usual number of memorandum copies of the original will be furnished.

The first and follow sheets, original (Standard Form 1035) and memorandum (Standard Form 1035a), will be used where the tabulation on the principal or certificate sheet does not contain sufficient space for itemization of the payee's bill or bills, and will be printed on white and yellow paper, respectively. Where more than one sheet is thus used, all sheets must be securely fastened together, the certificate sheet being the final sheet, and the totals of each sheet carried forward to or summarized upon the final sheet.

In all transactions involving expenditures from Government funds under a written agreement, whether formal, less formal (proposal and acceptance), or informal, and whether numbered under the uniform system provided or unnumbered, it is required that Standard Form 1036 shall be used to establish the fact of compliance with law and good business administration in respect to advertising, securing competition, acceptance of bid of the lowest responsible bidder, and execution of a lawful agreement. This form must invariably be attached to the agreement.

When the abstract accompanies the agreement to the General Accounting Office, references to the agreement on the voucher (Standard Form 1034) should be indicated by stating its number and date in the space provided therefor on the face of the voucher, or if the agreement is unnumbered and attached to the voucher, it should be so stated. In case of agreements involving more than one payment, reference to the contract number and date on subsequent vouchers will be a sufficient identification of the agreement under which the payments are made, and the use of Standard Form 1036 in connection with said subsequent vouchers will be unnecessary.

The abstract of agreement provided on Standard Form 1036 is for the purpose of summarizing in brief and handy form the contents of the agreement to which it is attached. Where the space on the face of the abstract is insufficient, the details called for may be carried to the reverse side of the form or made on a separate sheet.

Authority is granted to consume the printed supply on hand of the forms now in use corresponding to those named herein: *Provided*, That information as to contract number, date, etc., called for on the face of Standard Form 1034 be shown on the old forms and that use of old forms be discontinued not later than July 1, 1927.

Where payments are made on vouchers in favor of General Supply contractors, whose contracts are itemized annually in the General Schedule of Supplies, and the item numbers covering the articles purchased are given on the face of the voucher (Standard Form 1034) as provided for therein, the number and date of contract may be omitted from the spaces in the blank provided for the purpose.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 1100[54]

PAY ROLLS—RETIREMENT DATA

Department of the Interior,
General Land Office,
Washington, October 27, 1926.

Special Disbursing Agent, Certifying Officers, and Approving Officers.

Sirs: Hereafter in connection with each officer or employee from whose compensation no retirement deduction is made pay rolls or other vouchers for personal service must show that such officer or employee is not within the act of May 22, 1920, even though that fact may naturally be inferred from the nature of the employment. This requirement will affect, chiefly, registers and field employees of the surveying service.

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[54] See Circular No. 1155, p. 155.

Very respectfully,

D. K. Parrott,
Acting Assistant Commissioner.

Circular No. 1105

GOVERNMENT BILLS OF LADING NOT TO BE USED FOR SHIPPING PERSONAL EQUIPMENT

Department of the Interior,
General Land Office,
Washington, December 23, 1926.

Inspectors, General Land Office.

Sirs: It has recently come to the attention of this office that some inspectors are using Government bills of lading to ship personal equipment, such as tents, cots, bed rolls, blankets, clothing, etc., at Government expense. This is not permissible where the traveler is allowed a per diem in lieu of subsistence. The per diem is in lieu of all subsistence expenses. Lodging is a subsistence expense, and as the expense of shipping tents, cots, bedding, etc., is incident to lodging, the per diem is in lieu of it. Personal equipment that can be checked as baggage without additional cost to the Government may be shipped in that way.

Division inspectors should not furnish Government bills of lading for use in making shipments of personal equipment of inspectors.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 1106

REQUISITIONS FOR FUNDS

Department of the Interior,
General Land Office,
Washington, January 8, 1927.

Registers, United States Land Offices.

Sirs: Hereafter, when making requisitions for funds for salaries and expenses, registers who have but one bond should report the balance due the United States on account of "unearned moneys" as well as the appropriation balances. The additional information should be shown on a blank line at the bottom of the requisition and the balance should be included in the total.

When making requisitions for funds a great many registers give the date on which their bond was approved instead of the date of the bond. The same is true of accounts current, on which the date of the bond should be given and not the date of approval. The date of a bond is the date written into it at the time it is executed.

Very respectfully,

William Spry, *Commissioner.*

CIRCULAR NO. 1110

ACCOUNTS—REAPPRAISALS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 15, 1927.

Division Inspectors, Registers, and Special Disbursing Agents.

SIRS: Hereafter in connection with all appraisals or reappraisals chargeable to claimants or entrymen the salary, per diem, and travel expenses of the inspector making such appraisal or reappraisal will be included on the regular pay roll or travel expense vouchers and paid by the special disbursing agent in the usual way from the regular appropriation. The matter of reimbursing that appropriation from the claimant's or entryman's deposit will be taken care of by transfer vouchers, which vouchers will be stated, certified, and approved by the division inspector at the earliest practicable date, immediately after the completion of the reappraisal if the area is comparatively small, or month by month if the work of appraisal is to continue over a considerable period of time.

If the special deposit for appraisal or reappraisal is made with a register or a fiscal officer other than the disbursing agent paying the inspector's vouchers payment will be made on the transfer voucher by check in favor of the special disbursing agent, who will deposit the amount to his official credit under the appropriation from which payment was made, if current, and if not, he will deposit it to personal credit under the proper appropriation. If the special deposit is with the disbursing officer who pays the inspector he may accomplish the transfer by proper entries in his account current upon receipt of the account stated by the division inspector.

Very respectfully,

THOS. C. HAVELL, *Assistant Commissioner.*

CIRCULAR NO. 1130 [55]

INSTRUCTIONS RELATIVE TO THE USE OF STANDARD SUPPLY CONTRACT FORMS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 29, 1927.

To all Field Officers of the General Land Office.

SIRS: On July 1, 1927, there was forwarded to all field officers of this bureau a copy of Bureau of the Budget Circular No. 207 regarding standard supply contract forms to be used without deviation on and after September 1, 1927, to which were attached copies of the standard form.

Standard Forms Nos. 30, Invitation for Bids, 31, Form of Bid, and 32, Form of Contract, will be used in all cases where a formal contract is required; that is, where the transaction involves an expenditure of over $100, or where the transaction involves a series of payments over a period of time, such as telephone service, garage rent, etc., notwithstanding the fact that the aggregate expenditures thereunder will amount to less than $100. All formal contracts will be numbered and submitted to this office in triplicate for approval, accompanied by all evidence required by Comptroller General's decisions, in accordance with existing regulations. Since all formal contracts are approved by the department, the following article must be inserted after article 14: "Article 15. Approval. This contract shall be subject to the written approval of the Secretary of the Interior and shall not be binding until so approved."

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[55] Amended by Circular No. 1132, p. 151.

The new form of contract does not contain the form of oath of disinterestedness required by section 3745, Revised Statutes. It will therefore be necessary for each field office to order a sufficient supply of this form, No. 1–006, to meet the requirements from September 1 to the close of the fiscal year. The oath of disinterestedness is required on one copy of the contract only.

Standard Form No. 33, Short Form of Contract, will be used in lieu of the present proposal and acceptance forms in connection with transactions involving an expenditure of less than $100, where payment in full is made on a single voucher. This form of agreement will not be given a contract number but will be attached to the voucher to which it pertains.

Very respectfully,

Thos. C. Havell, *Acting Commissioner.*

Approved August 1, 1927.

E. C. Finney, *First Assistant Secretary.*

Circular No. 1132

CIRCULAR NO. 1130 AMENDED

Department of the Interior,
General Land Office,
Washington, September 1, 1927.

To All Field Officers of the General Land Office.

Gentlemen: In a decision of August 25, 1927, the Comptroller General held that Standard Government Short Form Contract (Supply), Standard Form No. 33, when executed as indicated thereon, may be accepted as in compliance with section 3744, Revised Statutes, stating that "Standard Form No. 33 not only provides for the notification of prospective bidders as to the needs of the Government and as to the conditions under which bids will be received, but provides for the statement of the conditions of both the offer and acceptance and for the signatures of the contracting parties at the end thereof." Since the short form contract will be more convenient for use in connection with a large number of the purchases made in the field, it may be used whenever practicable in lieu of Standard Forms Nos. 30, 31, and 32, and Circular No. 1130 of July 29, 1927, containing instructions relative to the use of standard supply contract forms is hereby amended accordingly.

Very respectfully,

THOS. C. HAVELL, *Acting Commissioner.*

Approved September 3, 1927.

JOHN H. EDWARDS, *Assistant Secretary.*

CIRCULAR NO. 1137

NUMBERING OF CONTRACTS OF FIELD INSPECTION SERVICE IN ALASKA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 4, 1928.

JAMES A. RAMSEY, *Division Inspector*, and
FRANK M. JOHNSON, *Supervisor of Surveys.*

SIRS: In order to facilitate the numbering of contracts and expedite action on vouchers of the field inspection service in Alaska, a new contract numbering agency is hereby established in the office of the division inspector at Anchorage, Alaska, to which is assigned symbol I5g–. Commencing with March 1, 1928, all contracts originating in the field inspection service in Alaska will be numbered in the office of the division inspector at Anchorage before being transmitted to this office for approval.

Circular No. 1060 relative to numbering contracts is hereby amended accordingly.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

CIRCULAR NO. 1142

ACCOUNTS—HEARINGS EXPENSES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 25, 1928.

Division Inspectors, Hearings Officers, and Special Disbursing Agents.

SIRS: Section 3 act of Congress approved April 26, 1926 (44 Stat. 323), read in connection with section 2 of the act of January 31, 1903 (32 Stat. 790), operates to give to witnesses in land hearings the same allowances in all States, $2 per diem while in attendance at and in going to and returning from, mileage at 5 cents and, under circumstances stated, a per diem of $3 in lieu of subsistence. Circulars Nos. 1075, 1117, and 1123 have called the matter to your attention but there is as yet a little lack of uniformity in these allowances.

The Interior appropriation act approved January 24, 1927 (44 Stat. 937), making appropriations for the fiscal year 1928, carries no appropriation, " Expenses of Hearings in Land Entries " as heretofore, but provides for the same expenses under the title "General Expenses, General Land Office," under which title it is provided:

> That where depositions are taken for use in such hearings the fees of the officer taking them shall be 25 cents per folio for taking and certifying same and 5 cents per folio for each copy furnished to a party on request.

Hearings officers and division inspectors will please see that vouchers for services in taking depositions are prepared accordingly.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 1143

TRAVEL ORDERS

Department of the Interior,
General Land Office,
Washington, March 22, 1928.

Approving Officers and Special Disbursing Agents.

Sirs: Hereafter travel expense vouchers of inspectors, division inspectors, district cadastral engineers, or others relying on general instructions as authority to travel, will bear a notation to the effect that travel within the division or district is authorized by paragraph 244, Circular No. 616, amended by Circular No. 762, and such notation as will define the division or district within the limits of which such travel is authorized. Until rubber stamps are provided for the purpose the blank space for citing authority may be made to read: "Under authority of paragraph 244, Circular No. 616, amended by Circular No. 762, for travel within his district (or division)" followed by the names of States or otherwise, descriptive thereof.

Very respectfully,

Thos. C. Havell, *Acting Commissioner.*

Approved March 22, 1928.

E. C. Finney, *First Assistant Secretary.*

INSTRUCTIONS RELATIVE TO EXECUTION OF CONTRACTS

Department of the Interior,
General Land Office,
Washington, April 7, 1928.

To All Field Officers of the General Land Office.

Sirs: Hereafter the following statement must be inserted in all contracts entered into:

> Bond waived upon condition that no payment will be made until service has been rendered or material has been delivered and accepted.

Contracts executed on the short form as well as those executed on the long form must contain the following:

> This contract shall be subject to the written approval of the Secretary of the Interior and shall not be binding until so approved.

Standard Form No. 1036, Abstract of Agreement, must be furnished in connection with all contracts entered into.

It has been noticed that in the majority of cases a copy of the oath of disinterestedness is attached to each copy of the contract. This is not necessary. Only the original oath need be furnished.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 52 L. D. 365]

Circular No. 1148 [m]

PAYMENTS TO BE CARRIED AS UNEARNED MONEYS

Department of the Interior,
General Land Office,
Washington, May 3, 1928.

Registers United States Land Offices.

Gentlemen: Hereafter you will carry as "unearned moneys" all payments of purchase moneys tendered in connection with final proofs on homestead, desert land, timber and stone, and mineral entries where final certificate is withheld, except payments of deferred installments on homestead entries embracing lands within ceded Indian reservations.

Paragraph 85 of Circular No. 616, approved August 9, 1918, is amended accordingly.

Very respectfully,

William Spry, *Commissioner.*

Approved May 3, 1928.

E. C. Finney, *First Assistant Secretary.*

Circular No. 1152

INCREASED COMPENSATION OF REGISTERS, ACT OF MAY 21, 1928 (45 STAT. 684)

Department of the Interior,
General Land Office,
Washington, May 26, 1928.

Registers, District Land Offices.

Sirs: Attention is invited to the act approved May 21, 1928 (45 Stat. 684), which reads as follows:

> That from and after the beginning of the next fiscal year the compensation of registers of local land offices shall be a salary of $1,000 per annum each and all fees and commissions now allowed by law to such registers, but the salary, fees, and commissions of such registers shall not exceed $3,600 each per annum; *Provided*, That the salary of the register of the Juneau land district, Alaska, shall be $3,600 per annum.

You will govern yourselves accordingly.

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[m] See Circular No. 276, p. 1095.

The act supersedes the act of July 19, 1919 (41 Stat. 194), so far as the register of the Juneau land district, located at Anchorage, Alaska, is concerned.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved May 26, 1928.

E. C. FINNEY, *First Assistant Secretary.*

CIRCULAR 1154

USE OF TRANSPORTATION REQUESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 11, 1928.

To All Field Employees of the General Land Office.

SIRS: By decision dated May 23, 1928, the Comptroller General rules that transportation requests must be used where the amount involved is $1 or more. In the decision he states:

> The intent and effect of the requirement of the Standardized Travel Regulations that transportation requests be used when practicable is that such requests should be used in all cases in which there does not exist some good reason from the Government's standpoint rendering their use incapable of being put into practice.
>
> Accordingly I have to advise that credit will not be allowed for any payments as reimbursement for cash fares in excess of $1 paid in connection with travel performed after June 15, 1928, in the absence of a clear showing that a transportation request could not have been used for the travel.

You will govern yourselves accordingly.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

CIRCULAR NO. 1155

PAY ROLLS—RETIREMENT DEDUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 11, 1928.

Special Disbursing Agents.

SIRS: The Comptroller General in a letter dated June 1 quotes from paragraph 4 of General Regulations No. 54:

> At the end of each month each disbursing officer making deductions on account of the retirement fund will transmit his check for the amount deducted, to the disbursing clerk, Bureau of Pensions, and will transmit with his account to the General Accounting Office, a list of pay rolls and vouchers on which retirement fund deductions have been made, showing therein, the amount, number, and date of check drawn in favor of the disbursing clerk, Bureau of Pensions,

and from paragraph 4, Supplement No. 2 to General Regulations No. 34:

> The gross amount to be charged to appropriations should always be approved for payment by the administrative officer, and this total should agree with the amount paid to the employee [and] the retirement deductions.

He furnishes a list of fiscal officers of this bureau whose accounts for the months of January, February, and March fail to show constant and full compliance with these regulations. An examination of those accounts discloses lack of compliance with the instructions in one of the following particulars:

> 1. More than one check drawn to the Bureau of Pensions during a month, or at a time other than "the end of the month";
> 2. The required list incomplete in one of the following points:
> (*a*) Failure of list of pay rolls and vouchers to show voucher number or numbers of pay rolls or other vouchers on which retirement deductions are made;
> (*b*) Failure to show the total deduction, and therefore to show the amount of the check drawn to the Bureau of Pensions;
> (*c*) Failure of list to show number or date (or both) of the check drawn to the Bureau of Pensions;
> 3. The pay roll or other personal service voucher is not always certified for the gross amount earned, but for the net amount after subtracting the retirement deductions.

Please study the quoted paragraphs carefully and see that their requirements are fully complied with in all accounts hereafter rendered.

Very respectfully, WILLIAM SPRY, *Commissioner.*

CIRCULAR No. 1157

UNCLAIMED CHECKS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 25, 1928.

Registers and Special Disbursing Agents.

GENTLEMEN: General Accounting Office regulations require that:

> On the first of the quarter * * * disbursing officers having in their possession checks issued to pay obligations of the United States, which for any reason remain undelivered for more than three full months from the last day of the month of issue, should forward such checks to the General Accounting Office, claims division, liabilities section, for safe-keeping and disposition.
>
> In forwarding the checks a statement should be furnished giving the name and symbol number of the disbursing officer and listing each check by number, date, amount, payee, payee's last known address, voucher reference, and statement of the nature of the payment; that is, whether for salary, reimbursement of expenses, supplies furnished, etc.

You will note that undelivered checks are to be sent direct to the General Accounting Office—not to this office—and that they are not to be held longer than through the quarter next succeeding the date on which they are drawn. The regulations apply to checks of all fiscal officers.

Very respectfully,
D. K. PARROTT,
Acting Assistant Commissioner.

CIRCULAR No. 1168[56]

REGULATIONS—PROCURING GASOLINE FOR GOVERNMENT-OWNED CARS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 4, 1928.

Field Employees of the General Land Office.

SIRS: Pursuant to decisions of the Comptroller General of June 23, 1928 (A-23229), and July 30, 1928 (A-23419), where small purchases of gasoline are made for Government-owned cars and the payment of a State tax is required, receipt should be taken in duplicate, showing State, date, and vendor, and the number of gallons procured, base price per gallon and tax per gallon, as well as total paid. Both receipts, one marked "duplicate," should be attached to the reimbursement voucher. The duplicate receipts will be detached in this office and scheduled to the General Accounting Office for collection of the State tax.

Wherever practicable gasoline should be procured under contract, and, in accordance with the decisions cited, such contracts should not provide directly or indirectly for the payment of any State tax.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

CIRCULAR No. 1169

ACCOUNTS—DIGEST OF RECEIPT-FUND SYMBOLS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 8, 1928.

Registers, Receivers, and Special Disbursing Agents.

SIRS: The Comptroller General has prescribed symbols for all receipt titles used by the Treasury Department in designating moneys covered into the Treasury which will be used in connection with the respective receipt titles.

The prescribed symbols by general headings and subheadings, with specific titles, pertaining to receipts under this office arranged in numerical order, are as follows:

3000 Fees:
    3260 Copying.
    3310 Land Offices (including commissions).
3800 Forfeitures:
    3820 Bonds—
        3824 Contractors.
4000 Assessments:
    4094 Surveying Public Lands, Deposits by Individuals for Expenses of.
4200 Reimbursements:
    4280 Expenses (give nature).
    4330 Government property lost or damaged.

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[56] See Circulars Nos. 1174, p. 162, and 1201 and 1204, p. 165.

- 5000 Sales of Government Property—Products. See also 7800.
  - 5090 Maps.
  - 5110 Waste paper.
  - 5180 Stores, condemned (unserviceable).
- 6000 Rents and Royalties:
  - 6003 Mineral Sales on Reserved Land, Tanana Valley, Alaska (special fund).
  - 6014 Coal Mine Leases in Alaska, Royalties on.
  - 6019 Land, Grazing.
  - 6020 Land.
  - 6022 Mineral Leasing Act, February 25, 1920, Receipts Under Future Production (give name of State).
  - 6024 Mineral Leasing Act, February 25, 1920, Naval Petroleum Reserve Lands (give name of State).
  - 6026 Mineral Leasing Act, February 25, 1920, Receipts Under Past Production (give name of State).
  - 6027 Oil and Gas, Royalties on, act of June 26, 1926 (44 Stat. 1621) (this is Cheyenne 034097).
  - 6030 Oil and Gas, Red River, South Half, Royalties, Money due Oklahoma, act of March 4, 1923.
  - 6040 Potash Deposits, Royalties, and Rentals.
  - 6060 Water Power Sites.
- 6200 Permits, Privileges, and Licenses:
  - 6240 Power Permits.
  - 6250 Power Transmission (right of way for power lines).
- 7000 Realization upon Assets:
  - 7150 Coos Bay Wagon Road Grant Fund (special fund).
  - 7600 Lands, Sale of, Public (by States and districts), Registers and Receivers, United States Land Offices.
  - 7610 Lands, Reserve, Sale of, Reclamation Projects, act of May 20, 1920.
  - 7650 Oregon and California Land Grant Fund (special fund).
  - 7660 Town Lots, Alaska.
  - 7670 Town Lots, Sale of Hot Springs Reservation, Arkansas (special fund).
  - 7680 Town Sites, Proceeds of Reclamation Service.
- 7800 Sale of Government Property:
  - 7810 Buildings, exclusive of land (give name and location).
  - 7820 Equipment. Includes trucks, horses, cars, machinery, furniture, and fixtures, and other capital equipment (give nature).
  - 7830 Land, etc. (give description and location). (Sale of Public Lands is 7600.)
  - 7840 Land and Buildings (give description and location).
- 8000 Trust Funds:
  - 8500 Interior Department (Civil)—
    - 8554 Outstanding Liabilities, Land.
    - 8560 Surveys, Completing, within railroad land grants.
    - 8562 Unearned Moneys, Land.
  - 8600 Interior Department (Indian)—
    - 8603 Blackfeet Reservation, Mont., Proceeds, Sale of Indian Lands (trust fund).
    - 8604 Cheyennes and Arapahoes in Oklahoma, Proceeds, Sale of Indian Lands (trust fund).
    - 8605 Cheyenne River Reservation, S. Dak., Proceeds, Sale of Indian Lands, act of May 29, 1908 (trust fund).
    - 8606 Cheyenne River Reservation, S. Dak., Proceeds, Sale of Indian Lands, act of January 28, 1913 (trust fund).
    - 8610 Chippewas in Minnesota, Proceeds, Sale of Indian Lands, act of January 14, 1889 (trust fund).
    - 8612 Coeur d'Alene Reservation, Idaho, Proceeds, Sale of Indian Lands (trust fund).
    - 8613 Colorado River Reservation, Ariz., Proceeds, Sale of Indian Lands (trust fund).
    - 8615 Colville Reservation, Wash., Proceeds, Sale of Indian Lands, act of March 22, 1906 (trust fund).
    - 8616 Crow Reservation, Mont., Proceeds, Sale of Indian Townsites, act of June 4, 1920 (trust fund).

- 8000 Trust Funds—Continued.
  - 8600 Interior Department (Indian)—Continued.
    - 8617 Crow Reservation, Mont., Proceeds, Sale of Indian Lands, act of April 27, 1904 (trust fund).
    - 8618 Devils Lake Reservation, N. Dak., Proceeds, Sale of Indian Lands (trust fund).
    - 8620 Flathead Reservation, Mont., Proceeds, Sale of Indian Lands, act of April 23, 1904 (trust fund).
    - 8621 Fort Berthold Reservation, N. Dak., Proceeds, Sale of Indian Lands (trust fund).
    - 8622 Fort Belknap Reservation, Mont., Proceeds, Sale of Indian Townsites (trust fund).
    - 8623 Fort Hall Reservation, Idaho, Proceeds, Sale of Indian Townsites (trust fund).
    - 8624 Fort Peck Reservation, Mont., Proceeds, Sale of Indian Lands (trust fund).
    - 8626 Kiowa, Comanche, Apache Indians, Moneys due for Oil and Gas, South Half Red River, act of March 4, 1923 (trust fund).
    - 8627 Kiowa Agency Hospital, Oklahoma, Proceeds, Sale of Indian Lands (trust fund).
    - 8628 Kiowa, Comanche, Apache Indians, Oklahoma, Proceeds, Sale of Indian Lands (trust fund).
    - 8629 Kiowa, Comanche, Apache Indians, Oklahoma, Proceeds, Sale of Indian Town Lots (trust fund).
    - 8630 Lower Brule Reservation, S. Dak., Proceeds, Sale of Indian Lands, act of April 21, 1906 (trust fund).
    - 8635 Pine Ridge Reservation, S. Dak., Proceeds, Sale of Indian Lands (trust fund).
    - 8636 Piute Indians, Pyramid Lake Reservation, Nev., Proceeds, Sale of Indian Lands (trust fund).
    - 8637 Red Lake Reservation, Minn., Proceeds, Sale of Indian Lands, act of February 20, 1904 (trust fund).
    - 8639 Rosebud Reservation, S. Dak., Proceeds, Sale of Indian Lands, act of March 2, 1907 (trust fund).
    - 8640 Rosebud Reservation, S. Dak., Proceeds, Sale of Indian Lands, act of April 23, 1904 (trust fund).
    - 8641 Round Valley Reservation, Calif., Proceeds, Sale of Indian Lands, act of February 8, 1905 (trust fund).
    - 8643 Rosebud Reservation, S. Dak., Proceeds, Sale of Indian Lands, act of May 30, 1910 (trust fund).
    - 8645 Standing Rock Reservation, N. Dak.–S. Dak., Proceeds, Sale of Indian Lands, act of May 29, 1908 (trust fund).
    - 8646 Standing Rock Reservation, N. Dak.–S. Dak., Proceeds, Sale of Indian Lands, act of February 14, 1913 (trust fund).
    - 8647 Shoshone or Wind River Reservation, Wyo., Proceeds, Sale of Indian Lands (trust funds).
    - 8649 Southern Ute Reservation, Proceeds, Sale of Indian Lands (trust funds).
    - 8650 Uintah and White River Ute, Proceeds, Sale of Indian Lands (trust fund).
    - 8651 Umatilla Reservation, Oreg., Proceeds, Sale of Indian Lands (trust fund).
    - 8652 Ute Indian Lands, Sale of.
    - 8655 Yuma Reservation, Calif., Proceeds, Sale of Irrigable Lands, act of April 21, 1904 (trust fund).

An alphabetical arrangement follows:	Symbol
Bonds, Contractors, Forfeiture of	3824
Coal Mine Leases in Alaska, Royalties on	6014
Contractors, Forfeiture of Bonds of	3824
Coos Bay Wagon Road Grant Fund	7150
Copying Fees	3260
Equipment, includes trucks, horses, furniture and fixtures, cars, machinery, and other capital equipment, Sale of	7820
Expenses (give nature) Reimbursement for	4280
Fees and Commissions (see 3310).	

	Symbol
Forfeiture of Bonds	3820
Contractors	3824
Government Property Lost or Damaged, Reimbursement for	4330
Land and Buildings (give description and location), Sale of	7840
Land, etc. (give description and location), Sale of	7830
Land, Grazing, Rents from	6019
Land, Rents from	6020
Land Offices (including commissions), Fees	3310
Lands, Sale of Public (by States and districts) (registers and receivers)	7600
Maps, Sale of	5090
Mineral Leasing Act, February 25, 1920, Naval Petroleum Reserve Lands, Rents from	6024
Mineral Leasing Act, February 25, 1920, Receipts under, Future Production	6022
Mineral Leasing Act, February 25, 1920, Receipts under, Past Production	6026
Oil and Gas, Red River, South Half, Royalties, Money due Oklahoma, Act of Mar. 4, 1923	6030
Oregon and California Land Grand Fund	7650
Outstanding Liabilities, Land	8554
Paper Waste, Sale of	5110
Potash Deposits, Royalties and Rentals from	6040
Power Permits	6240
Power Transmission (right of way for power lines), Permits for	6250
Proceeds, Sale of Government Property (see Symbol 5000–5499 and 7800–7999).	
Rents (see also Royalties)	6000–6199
Royalties (see also Rents)	6000–6199
Stores, Condemned, Sale of	5180
Surveying Public Lands, Deposits by Individuals for Expenses of	4094
Surveys, Completing, within Railroad Land Grants	8560
Town Lots, Alaska	7660
Town Lots, Sale of, Hot Springs Reservation, Ark	7670
Town Sites, Proceeds of, Reclamation Service	7680
Trust Funds	8000
Trust Funds, Interior Department (Indian) (see Symbols)	8601–8655
Unearned Moneys, Lands	8562
Water Power Sites, Rents and Royalties on	6060

The Comptroller General directs:

"Disbursing and collecting officers will use symbols and titles of receipt accounts on all schedules of collections (abstracts of moneys returned or applied and abstracts of moneys applied) and accounts current forwarded to the General Accounting Office, and also on all certificates of deposit for funds covered into the Treasury of the United States."

Beginning with the receipt hereof the symbols above prescribed will be used in connection with fund titles on all abstracts of moneys returned or applied, abstracts of moneys applied, accounts current, and certificates of deposit to personal credit (Form 1 A).

The titles are to be written in the usual way, as for example, "6022 Receipts under Mineral Leasing Act of February 25, 1920—Future Production (State)" instead of the index form used herein.

The Comptroller General says:

> It is essential that all deposits made to the credit of the Treasurer of the United States for credit to an appropriation, revenue, or trust fund account be covered in the Treasury without unnecessary delay and all depositing officers are enjoined when making such deposits to state clearly the title of the fund, giving in doubtful cases such information as will disclose its character and identify the fund involved.

When money is deposited of a class to which a specific receipt symbol has not been assigned, the symbol assigned to the major source within which the receipt falls will be used until such time as the receipt is finally classified and symbolized. That is, for example, if there is a receipt for rents or royalties other than those for which definite symbols are assigned, the symbol assigned to the major source "Rents and Royalties" being 6000, that number should be used followed by such an expression as will identify the particular receipt, or, if there is a receipt for Indian Lands that can not be identified with one of the symbols given, the number to be used is 8600, the symbol for the major source "Trust Funds—Interior Department (Indian)" followed by some such identifying statement as "Sale of Blank Indian Lands" and a citation of the statute.

Very respectfully,

William Spry, *Commissioner.*

Order No. 303

ACCOUNTS—EXPENSES OF SUBSISTENCE

Department of the Interior,
Washington, October 13, 1928.[n]

Supplementing Order No. 158½, the allowance of actual expenses of subsistence in individual cases in excess of $5 per day should be approved by the Secretary.

John H. Edwards, *Acting Secretary.*

Circular No. 1171

ACCOUNTS—DEPOSITS BY PUBLIC SURVEY OFFICES

Department of the Interior,
General Land Office,
Washington, October 26, 1928.

Office Cadastral Engineers:

Beginning November 1, 1928, you will deposit all remittances "For credit, subject to check, in the special deposit account of Frank A. Lewis, Symbol No. 61391."

If there is a Federal reserve bank or branch bank in your city you will deposit cash (including money orders) and paper (checks, drafts, etc.) in the form received with such Federal reserve bank or branch bank, for credit subject to Mr. Lewis' check. If there is no such bank or branch in your city you will forward all checks, drafts, etc. (Treasury regulations say "daily") for deposit with the Denver branch, Federal Reserve Bank of Kansas City, making the set of certificates in form:

CERTIFICATE OF DEPOSIT FOR CHECKING ACCOUNT

Address_________________________________. Deposit No. _________. Depositor
(your city)
_________________________________, office cadastral engineer has deposited with
(your name)
Federal Reserve Bank of Kansas City, Denver branch, amount _____________
(in words)
dollars for credit, subject to check, in the special deposit account of Frank A. Lewis ______ (Symbol No. 61391) $__________________
(amount in figures)

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[n] See order of Aug. 1, 1929, p. 164.

Wherever there is a general depositary (national bank or Federal reserve bank or branch bank) cash (including money orders) will be deposited locally with such general depositary, but always for credit subject to Mr. Lewis' check.

Abstracts (or schedules) of Collections, will, as heretofore, include all moneys received by you during the month for which they are rendered.

Very respectfully, WILLIAM SPRY, *Commissioner.*

CIRCULAR NO. 1174

RELATIVE TO STATE TAX ON GASOLINE PURCHASED FOR GOVERNMENT USE AND PAID FOR FROM PRIVATE FUNDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 26, 1928.

Field Employees of the General Land Office.

SIRS: Supplementing Circular No. 1168 of October 4, 1928, relative to State tax on gasoline purchased for Government use and paid for from private funds, you are advised that no special form of receipt has been or will be provided, and that the duplicate as well as the original receipt should be on the regular subvoucher for travel and other expenses (Form 4–160).

Where it becomes necessary because of lack of private funds to purchase on credit gasoline for Government use from a retail dealer who requires payment of the State tax, the dealer's voucher should be taken in duplicate on the regular form (Standard Form No. 1034), and in addition to showing the State, date, number of gallons, base price per gallon, and tax per gallon, it must be shown that the purchase was not under contract and that contract was impracticable. The duplicate voucher, marked "duplicate," should accompany the original and usual memorandum copies to the disbursing officer, who will send it with his accounts to this office to be scheduled with duplicate receipts detached from reimbursement vouchers.

Small purchases of gasoline should be paid for from private funds where possible and reimbursement secured in accordance with Circular No. 1168, especially where the purchaser has to state a reimbursement voucher anyway.

Very respectfully, WILLIAM SPRY, *Commissioner.*

CIRCULAR NO. 1178

PROCEDURE FOR ADJUSTMENT OF COLLECTIONS ON ACCOUNT OF SUSPENDED AND DISALLOWED ITEMS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 10, 1928.

Disbursing Officers, General Land Office.

SIRS: By General Regulations No. 63, as modified by Supplement No. 1, effective January 1, 1929, the Comptroller General of the

United States prescribes the following procedure for the prompt adjustment of collections on account of suspended and disallowed items in your accounts:

You may prepare and forward to the General Accounting Office not more frequently than four times a month a statement of amounts collected on account of such items, giving the voucher number, certificate of settlement number, name of payee, appropriation amount received, total collected and account in which the same will be taken up and accounted for. If a collection is made of an item suspended or disallowed in the accounts of another disbursing officer or agent the name of such officer or agent should be given in the space provided for certificate of settlement number. Each notice will bear a consecutive reference number, the first notice submitted in July of each fiscal year being number one.

Upon receipt of such notice of collection in the General Accounting Office, items involved will be removed from the difference sheet and the collections reported subsequently checked with the schedule of collections forwarded with your accounts. Any item on the notice of collection that can not be identified on the schedule will be charged back to the disbursing officer.

The notice of collection shall be prepared on Standard Form No. 1043, a supply of which will be forwarded you.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 1179

ACTING REGISTER'S REPORT OF NO TRANSACTIONS

Department of the Interior,
General Land Office,
Washington, December 10, 1928.

Acting Registers, United States Land Offices.

Sirs: In order to simplify the method of reporting to the General Accounting Office and the procedure for handling therein reports from collecting and disbursing officers and agents covering accounting periods in which no funds are received, no collections or disbursements made and no balance on hand, the Comptroller General of the United States, by General Regulations No. 70, approved Standard Form No. 1063, Collecting and Disbursing Officer's or Agent's Report of No Transactions, to be used in the manner and under the circumstances hereinafter prescribed.

At the close of any monthly accounting period, beginning with the accounts for the month of December, 1928, acting registers, who during such period have had no advance of funds, made no collections or disbursements and have no balance to be accounted for, will fill out a report of no transactions, Standard Form No. 1063, execute the certificate thereon and transmit same to this office within the time prescribed for transmitting your accounts.

You will be supplied with the necessary blanks.

Very respectfully,

William Spry, *Commissioner.*

CIRCULAR NO. 1196

ACCOUNTS—UNEARNED MONEY LISTS—CIRCULAR NO. 616 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 1, 1929.

Registers, United States Land Offices.

SIRS: Hereafter the annual lists of unearned moneys required by paragraph 94, Circular No. 616, will be prepared as follows:

July 31.—Alliance, Carson City, Las Cruces, Santa Fe, Lakeview.

September 30.—Roseburg, The Dalles, Pierre, Salt Lake City.

November 30.—Spokane, Buffalo, Cheyenne, Evanston.

January 31.—Anchorage, Fairbanks, Phoenix, Little Rock, Los Angeles.

March 31.—Sacramento, Denver, Pueblo, Gainesville, Blackfoot.

May 31.—Coeur d'Alene, Cass Lake, Billings, and Great Falls.

Paragraph 94, Circular No. 616, is amended accordingly.

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved July 1, 1929.

JOHN H. EDWARDS, *Assistant Secretary.*

ORDER NO. 370

ACCOUNTS—PER DIEM

DEPARTMENT OF THE INTERIOR,
Washington, August 1, 1929.

Department Orders Nos. 158½ and 303, dated August 11, 1926, and October 13, 1928, respectively, relative to the issuance of travel orders, are hereby so modified as to authorize the respective bureau heads to determine the per diem to be allowed in all cases.

RAY LYMAN WILBUR, *Secretary.*

CIRCULAR NO. 1199

CERTIFICATES OF DEPOSIT—QUADRUPLICATE TO BE FORWARDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 16, 1929.

Registers and other Fiscal Officers.

SIRS: In compliance with the Comptroller General's request, and in order that your office files may contain at all times signed papers on which a full inspection of your office may be made, you will hereafter retain for your files the signed duplicate copy of certificates of deposit (Form 6599) and forward to this office the quadruplicate copy on which you have inserted the depositary "date credited" in the blank space at the lower right-hand corner.

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved August 16, 1929.

JOHN H. EDWARDS, *Assistant Secretary.*

CIRCULAR NO. 1201 [a]

GAS-TAX EXEMPTION BLANKS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 29, 1929.

United States Supervisor of Surveys, District Cadastral Engineers, and Chiefs of Field Divisions.

SIRS: The Comptroller General mentions the States of Arizona, California, Florida, Idaho, Iowa, Louisiana, Michigan, Missouri, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, Vermont, and Washington as granting exemption from payment of State gas tax upon the execution of a certificate showing that the purchaser is an employee of the United States and that the gasoline is for use in conducting the business of the Federal Government, and directs that payment of such tax be avoided whenever possible.

You should secure exemption blanks from the State whenever practicable. A supply of mimeographed blanks has been mailed you for use when others are not available.

Very respectfully,

C. C. MOORE, *Commissioner.*

CIRCULAR NO. 1204

EXEMPTION FROM GASOLINE TAX

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 7, 1930.

United States Supervisor of Surveys, District Cadastral Engineers, and Chiefs of Field Divisions.

GENTLEMEN: By Circular No. 1201, dated August 29, 1929, you were advised the names of States which grant exemption from payment of State gas tax upon the execution of a certificate showing that the purchaser is an employee of the United States and that the gasoline is for use in conducting the business of the Federal Government, and were informed that the Comptroller General of the United States had directed that payment of such tax should be avoided whenever possible.

The Comptroller General now advises that notwithstanding exemption from payment of the tax may be secured by executing forms provided by the States, employees of this department, traveling in the States named, have purchased gasoline on which a tax was paid, and requests that there be imposed upon employees the importance of claiming exemption from State tax when making purchases of gasoline for official use.

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[a] See Circular No. 1204, p. 165.

Hereafter vouchers which include gas tax on gas purchased in States granting an exemption will not be approved without satisfactory explanation.

The following States grant exemption from payment of gas tax when proper certificates are furnished: Arizona, California, Florida, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, New Mexico, Oklahoma, Oregon, Rhode Island, Pennsylvania, South Dakota, Utah, Vermont, Washington, West Virginia, and Wisconsin.

Very respectfully,

C. C. MOORE, *Commissioner.*

AGENTS AND ATTORNEYS

[Reported, 35 L. D. 534]

REGULATIONS GOVERNING THE RECOGNITION OF AGENTS AND ATTORNEYS BEFORE DISTRICT LAND OFFICES

Department of the Interior,
General Land Office,
Washington, April 20, 1907.[1]

1. An attorney at law who desires to represent claimants or contestants before a district land office must file a certificate, under the seal of a United States, State, or Territorial court for the judicial district in which he resides or the local land office is situated, that he is an attorney in good standing.

2. Any person (not an attorney at law) who desires to appear as an agent for claimants or contestants before a district land office must file a certificate from a judge of a United States court, or of a State or Territorial court having common-law jurisdiction, except probate courts, in the county wherein he resides or the local office is situated, duly authenticated under the seal of the court, that such person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render clients valuable service, and otherwise competent to advise and assist them in the presentation of their claims or contests.

3. The oath of allegiance acquired by section 3478 of the United States Revised Statutes must also be filed by applicants. In case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

4. An applicant to practice under the above regulations must address a letter to the register and receiver, inclosing the certificate and oath above required, in which letter his full name and post-office address must be given. He must state whether or not he has ever been recognized as an attorney or agent before this department or any bureau thereof, or any of the local land offices, and, if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office under the Government of the United States.

5. After an application to practice has been filed in due form, the register and receiver will enroll the name and post-office address of the applicant upon a record kept by them for that purpose, and sign and deliver to him a certificate of such enrollment, and thereafter recognize the applicant as an attorney or agent, as the case may be, unless they have good reason to believe that the person making the application is unfit to practice before their offices, in which case they

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[1] Paragraph 8 of these regulations amended by Circular No. 889, p. 1107.

will at once forward the application to the Commissioner of the General Land Office, with a report giving full specification of their reasons for so doing, and furnish a copy of such report to the applicant, and notify him that he will be allowed to file a reply thereto with said commissioner within 30 days from such notice.

6. When you have recognized and enrolled the name of any person as an attorney or agent, you will at once advise the Commissioner of the General Land Office of that fact, and give the name and post-office address of such person.

7. An attorney or agent who has been admitted to practice in any particular land district, or in the Department of the Interior, may be enrolled and authorized to practice in any other district upon filing with the register and receiver of such district a certificate of the register and receiver before whom he was admitted to practice, or a certificate of the Commissioner of the General Land Office, that he is an attorney or agent in good standing.

8.[2] Every attorney must, either at the time of entering his appearance for a claimant or contestant or within 30 days thereafter, file written authority for such appearance, signed by said claimant or contestant, and setting forth his or her present residence, occupation, and post-office address. Upon a failure to file such written authority within the time limited, it is the duty of the register and receiver to no longer recognize him as attorney in the case.

9. When the appearance is for a person other than a claimant or contestant of record, the attorney or agent will be required to state the name of the person for whom he appears, his post-office address, the character and extent of his interest in the matter involved, and when and from what source it was acquired. Authorizations and powers signed or executed in blank will not be recognized.

10. If any attorney or agent shall knowingly commit any of the following acts, viz: Represent fictitious or fraudulent entrymen; prosecute collusive contests; speculate in relinquishments of entries; assist in procuring illegal or fraudulent entries or filings; represent himself as the agent or attorney of entrymen when he is only an attorney or agent for a transferee or mortgagee; conceal the name or interest of his client; give pernicious advice to parties seeking to obtain title to public land; attempt to prevent a qualified person from settling upon, entering, or filing for a tract of public land properly subject to such entry or filing, or be otherwise guilty of dishonest or unprofessional conduct, or who, in connection with business pending in local land offices or in this department, shall knowingly employ as subagent, clerk, or correspondent a person who has been guilty of any one of these acts, or who has been prohibited from practicing before the register and receiver or this department, it will be sufficient reason for his disbarment from practice.

11. When any register and receiver shall, either through their own personal knowledge or through any charge sworn to by some other person, have information that an attorney or agent admitted to practice before their office has been guilty of any act or misconduct which would warrant his disbarment, such register and receiver shall at once make investigation, and if they have or find reasonable grounds for believing the attorney or agent guilty of such acts or misconduct,

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[2] See amendment, p. 1107.

they will at once formulate specific charges against him and forward the same to the Commissioner of the General Land Office for his consideration and such action thereunder as he may direct.

12. If the Commissioner of the General Land Office finds that any charges preferred by any register and receiver are sufficient to support a disbarment proceeding, he will at once forward the charges submitted to him to the register and receiver with his approval and such directions as he may deem necessary, and thereafter the register and receiver will at once furnish a copy of the charges to the accused attorney or agent, and notify him that unless he, within 30 days from such notice, files in their office a denial of such charges under oath, the charges will be taken as confessed and forwarded with the register's and receiver's report thereon to the Commissioner of the General Land Office for further appropriate action.

13. In all cases where denials are filed as required by rule 12 hereof, the register and receiver will at once fix a day for a hearing under such charges and thereafter proceed in the manner prescribed by the Rules of Practice regulating other hearings before their office.

14. In all cases where an accused attorney or agent fails to file a denial as required by rule 12 hereof, and in all cases where the register and receiver have rendered a decision, either favorable or unfavorable to the accused attorney or agent, after a hearing, they will at once make report and recommendation thereon to the Commissioner of the General Land Office, and furnish the accused attorney or agent with a copy of such report and decision, and notify him that he will be allowed 30 days from date of such notice within which to file his objections thereto with the commissioner.

15. After the expiration of the 30 days mentioned in rule 14, or sooner if the accused attorney or agent so request it, the Commissioner of the General Land Office will consider the record and recommendations forwarded by the register and receiver, and if in his judgment disbarment is not warranted, he will dismiss the charges and notify the register and receiver and the accused attorney or agent thereof; but if he finds that disbarment is warranted he will render his decision so holding and notify the accused attorney or agent thereof and of his right of appeal therefrom within the time and in the manner prescribed by the Rules of Practice for other appeals to the Secretary of the Interior.

16. If any accused attorney or agent shall fail to appeal from the decision of the Commissioner of the General Land Office as prescribed in rule 15, or if the decision of the commissioner is affirmed on such appeal, such attorney or agent will thereafter stand disbarred and be precluded from representing claimants or contestants before the local land officers, and the accused attorney or agent and the register and receiver will be so notified.

17. Prior to their actual disbarment attorneys and agents will be recognized as such, unless for special reasons the Secretary of the Interior shall order their suspension from practice during the pendency of the proceedings against them, but registers and receivers will in no case attempt to suspend them.

R. A. Ballinger, *Commissioner.*

Approved April 20, 1907.

James Rudolph Garfield, *Secretary.*

[Reported, 46 L. D. 206]

REGULATIONS GOVERNING THE RECOGNITION OF AGENTS, ATTORNEYS, AND OTHER PERSONS TO REPRESENT CLAIMANTS BEFORE THE DEPARTMENT OF THE INTERIOR AND THE BUREAUS THEREOF

DEPARTMENT OF THE INTERIOR,
Washington, September 27, 1917.

REGULATIONS

Under the authority conferred upon the Secretary of the Interior by the fifth section of the act of July 4, 1884, the following regulations are promulgated for the guidance of the various bureaus and offices.

1. Any person who is an attorney at law in good standing and a citizen of the United States, or has declared his intention to become such a citizen, may be admitted to practice as an attorney in and may be recognized as the representative of claimants before the Department of the Interior and its several bureaus by presenting for that privilege his satisfactory application containing recitals as to the following facts:

(*a*) The applicant's full name, age, and permanent post-office address; (*b*) the date on which he was first admitted to practice before any court and the name and place of location of such court; (*c*) the name and place of location of the last court before which he was admitted or enrolled, and the name and location of the court before which he has lately most actively practiced; (*d*) the name of the executive department or bureau of the Federal Government, if any, in which he has been admitted to practice or in which he has been denied admission to practice, and the date of such admission or denial; (*e*) whether he has ever been disbarred or suspended or excluded from practice, and if so, the grounds on which he was disbarred, suspended, or excluded, and the dates of his disbarment, suspension, or exclusion and readmission to practice; (*f*) the name and location of the court, courts, or executive department by which his disbarment, suspension, or exclusion, and readmission were ordered; and (*g*) the name of the office or employment, if any, which the applicant holds or has under the Government of the United States at the date of his application for admission, or has theretofore so held or had, if any, and the date and the cause of his separation from such former office or employment.

2. Any attorney at law whose application for admission to practice is pending before the Department of the Interior or any of its bureaus may, at the discretion of the officer before whom it is pending, secure the right to enter his appearance in any proper matter pending for adjudication by such department or bureau, and continuously thereafter and until final adjudication thereof exercise all the rights and privileges of an admitted attorney by presenting his application therefor to the Secretary of the Interior or to the head of the bureau before which such matter is pending.

3. Any competent person who is a citizen of the United States, or who has declared his intention to become such a citizen, and who is not an attorney at law, may be admitted to practice as an agent in, and may be recognized as the representative of claimants before the Department of the Interior and all its bureaus by presenting his satisfactory application, under oath, for that privilege containing recitals as to the following facts:

(*a*) The applicant's full name, age, present occupation, permanent post-office address, and his occupation during each of the preceding 10 years; (*b*) a statement as to whether he has theretofore been admitted to practice or denied admission to practice before any executive department or bureau of the Federal Government, and if so, the name of such department and the date of his admission or denial; (*c*) whether he has ever been disbarred or suspended or excluded from practice as such agent, and if so, the grounds on which he was disbarred, suspended, or excluded, the date of his disbarment, suspension, or exclusion, and the name of the department by which the same was ordered; (*d*) the name of any office or employment, if any, which the applicant holds or has under the Government of the United States at the date of his application for admission, or has theretofore so held or had, if any, and the date and cause of his separation from such former service or employment; (*e*) a brief statement of the applicant's educational qualifications and knowledge of the laws administered by said department and its bureaus; and (*f*) the names and post-office addresses of five reputable persons who have an intimate knowledge of the applicant's character and qualifications.

4. Each application for admission as attorney must be accompanied by and have attached thereto, in addition to the oath prescribed by section 1757, Revised Statutes, *supra*, a duly executed and authenticated certificate from the clerk of the court or courts named in such application, stating that the applicant is a person of good moral character and in good repute, and that he has been and is duly admitted to practice in the court of which he is the clerk, and that the applicant is at that time an attorney in good standing therein; and each applicant for admission as an agent must furnish and attach to his application as a part thereof, and in addition to the oath prescribed by section 1757, Revised Statutes, *supra*, a certificate signed by a judge of a court of record stating that the applicant is a person of good moral character and in good repute, possessed of the necessary qualifications to enable him to render claimants valuable service, and otherwise competent to advise and assist claimants in presenting their claims before the Department of the Interior and its bureaus.

5. All applications for admission to practice must be addressed to the Secretary of the Interior and be filed with the head of the bureau before which the applicants named therein expect most frequently to appear; and the officer with whom any such application is filed will, after such consideration and investigation as he may deem necessary, forward such application, together with such report and recommendation thereon as the facts, in his judgment, warrant to the said Secretary for his consideration and action thereon.

6. The Secretary of the Interior, or the head of any bureau with whom any application for admission to practice is filed, may require

the applicant named therein to furnish such other evidence or statement in support thereof as he may deem advisable, and may make such investigation, or cause such investigation to be made as may in his judgment be necessary to enable him to determine the proper action to be taken on such application; and favorable action will not be taken on any such application until after the applicant named therein shall have furnished such additional evidence or statement as may be required of him.

7. Firms of agents or attorneys, as such, will not be permitted to practice before the department or recognized as having the right to appear before it, or any bureau or office thereof, in any proceedings or matter involving the services of an agent or attorney, and except in the Pension Bureau, in the prosecution of any matter by any such firm, every pleading, brief, motion, or other paper or communication shall be signed individually by one or more duly qualified members thereof, and such signature shall be considered as a certificate by such agent or attorney that he has read the papers so signed by him; that upon the instructions laid upon him regarding the case there is good ground for the same; that no scandalous matter is inserted therein; and that it is not interposed for delay.

8. No person holding any office or place of trust or profit under the Government of the United States will be permitted to appear as an attorney or agent for the claimant in any case against the United States; nor shall any person who has, within two years next preceding his admission to practice before the department, been employed in any of the executive departments of the Government be permitted to appear as attorney or agent of the claimant in any case involving the prosecution of a money demand against the United States, unless the case in which he appears shall have been presented after his retirement from such service. No attorney will be recognized or heard as counsel in any case in the consideration and disposition of which he has directly participated, in any capacity, during his connection with the department.

9. No officer authorized to receive final proofs, or to officiate in the preparation and execution of applications and affidavits for entry of public lands, will be permitted to appear for and represent the claimant in any case pending before the department, the General Land Office, or any district land office in which he shall have rendered such official service.

10. Authority to appear in and practice before the department includes authority to practice in and before any and all of the bureaus and offices of the department, except the Patent Office. Each of the several bureaus and offices of the department will be, from time to time, advised of the names and addresses of persons admitted to practice as attorneys or agents.

11. Attorneys or agents shall not contract for, demand, or receive, directly or indirectly, any compensation whatsoever, for advice or consultation concerning the pension laws, and such of the bounty land laws as are administered and executed by the Pension Bureau, except such compensation as may be lawfully paid by order of the Commissioner of Pensions, whether a claim has been or is thereafter filed for the person in whose behalf such advice or consultation is had.

12. Whenever the Secretary, or the head of any bureau of the department, has knowledge, or sufficient information that any attorney or agent admitted to practice before the department is engaged in unprofessional or dishonest practice, or has been guilty of disreputable conduct in connection with any matter before the department, or any bureau or subordinate office thereof, or is disreputable or incompetent, or has refused to comply with any of the rules and regulations governing his admission as such, or has with intent to defraud in any manner deceived, misled, or threatened any claimant or prospective claimant, by word, circular, letter, or advertisement, the head of such bureau, and when the offense is committed before the department, then the head of the bureau which the Secretary may designate for that purpose shall give the accused agent or attorney due notice with a statement of the charge or charges against him, which statement shall be sufficiently specific to permit the accused intelligently to make answer thereto, and shall cite said attorney or agent to show cause within a given time why he should not be disbarred.

If an answer, under oath, is filed denying the charges, or so explaining them, as to raise an issue thereon, a time and place shall then be set for the taking of testimony. If, however, said attorney or agent shall fail to file an answer or other pleading, such charge or charges will be taken as confessed and judgment may be rendered as upon default, and the head of the bureau from which the charge or charges emanated shall transmit the record to the Secretary together with his recommendations. The taking of testimony under this rule shall be held at as convenient a place as possible for both the Government and the defendant, and notice shall be served upon the defendant notifying him of the time and place at which testimony will be submitted by the Government, in order that he may be present and cross-examine the witnesses. Ten days' notice, in writing, shall be given the opposite party of the taking of testimony, such notice to be served either personally or by registered mail, and the 10-day period shall be considered as running from the date on which notice was personally served upon defendant, or if service is had by mail, then from the date on which said notice was received as shown by the return registry receipt card. Testimony shall be reduced to writing and be signed by the witnesses, unless otherwise stipulated. Testimony may be taken before any officer authorized to administer oaths for general purposes or before any officer or agent of the department designated by the Secretary for that purpose. Depositions may be taken by either party before any officer duly authorized to administer oaths for general purposes, or before any Government agent designated by the Secretary for that purpose, upon notice in writing as above provided, and such depositions may be filed as evidence before the head of the bureau from which the charge or charges emanated. After the testimony has been taken and forwarded to the head of the bureau having jurisdiction, it will be considered, and if, in the opinion of such bureau head, such attorney or agent should be disbarred, he will so recommend, transmitting the record together with his recommendations to the Secretary, who will thereafter take such action thereon as the law and facts seem to warrant.

13. Any agent or attorney will be deemed *disreputable*, in the sense in which that word is used in the foregoing paragraph, and be subject to suspension or exclusion from practice as such, who, after being admitted to practice, knowingly commits or is guilty of any of the following acts, to wit: (*a*) Represents fictitious or fraudulent applicants for title to public lands, or fictitious or fraudulent applicants for pensions or for the payment of claims of any character by the United States; (*b*) prosecutes collusive or fraudulent land contests, or presents or prosecutes fraudulent pension or other claims against the United States; (*c*) speculates in relinquishments of unassignable land entries or land claims or in unassignable claims of any kind against the United States; (*d*) represents himself as agent or attorney for land or other claimants when in fact he is only agent or attorney for the transferee or mortgagee of such claimants; (*e*) fraudulently or wrongfully attempts to prevent any qualified person from settling upon, entering, or filing for public lands; (*f*) demands or accepts any fee proscribed by paragraph 11 of these regulations; (*g*) or who is otherwise and in any manner whatever guilty of dishonest or unprofessional conduct; (*i*) or who, in the presentation or prosecution of, or in connection with, any matter or business pending before the said department or any of its bureaus or offices, knowingly has as his associate, or employs as his agent, subagent, or correspondent, any person who has been guilty of any of the above-mentioned acts, or who has been denied admission to practice, or is suspended or disbarred from practice before said department, or who himself knowingly acts as the associate, agent, subagent, or correspondent of any such person.

14. Upon the disbarment of any attorney or agent, notice thereof will be given to the heads of the bureaus of this department, and thereafter, until otherwise ordered, such disbarred person will not be recognized as attorney or agent in any claim or other matter before this department or any bureau thereof.

ALEXANDER T. VOGELSANG,
Acting Secretary.

(Laws omitted.)

CIRCULAR NO. 947

REPORTS ON APPLICATIONS FOR ADMISSION TO PRACTICE BEFORE LOCAL LAND OFFICES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 28, 1924.

Chiefs of Field Divisions.

SIRS: Reference is hereby made to Circular No. 127, addressed to registers and receivers, dated June 11, 1912, which reads as follows:

> Hereafter, whenever there is filed with you an application to practice as agent or attorney before your office, you will defer action thereon, advise the Chief of Field Division of the filing thereof, and await his report on the same.

Where the Chief of Field Division advises that there is no objection on his part to the admission of applicant, you will proceed to act upon the same in the usual way, and in your report on Form 4–285 to this office, you will state that the chief has reported favorably on the application. In case he reports that he desires to make a report to this office, you will further defer action until receipt of advice from this office.

You are hereby instructed that your reports on such applications should be made to the register and receiver as promptly as possible, not later than 30 days from receipt in your office of the request for such report, unless you desire to request instructions from this office in the case, or unless your preliminary investigation discloses reasonable grounds for believing that a more extended investigation of claimant's character and fitness is warranted. Where delay beyond the 30-day period is necessary, you will briefly advise the register and receiver that in your opinion a further investigation is deemed necessary.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 1125

RELATIVE TO FURNISHING LISTS OF PLAT MAKERS, ABSTRACTERS, AND ATTORNEYS

Department of the Interior,
General Land Office,
Washington, June 27, 1927.

Registers, United States Land Offices.

Gentlemen: By direction of the secretary, the attention of all registers is invited to Circular No. 453 of December 30, 1915, which is still in force and which reads as follows:

> Attention has been called to the fact that some local officers who are unable, because of the pressure of current business relating to the entry of land, to make plats or diagrams when requested, refer the order to an outside person or company, or recommend to the applicant some certain person or company as able to do the work.
>
> When it is necessary for you to refuse to fill an order for a plat or diagram, the fee received should be returned to applicant and he advised of the reason therefor. There is no objection to your furnishing to the party a list of the names of persons or companies located in your city who follow the business of preparing such diagrams, but the list should be complete and be arranged in alphabetical order. Under no circumstances should you recommend any person or company.
>
> If asked for a list of abstracters doing business in your city, or for a list of attorneys resident in your city who practice before your office, and you attempt to comply with the request, care should be exercised to make the list complete, arranged in alphabetical order.
>
> All prior instructions in conflict herewith are hereby revoked.

Very respectfully,

William Spry, *Commissioner.*

Approved June 27, 1927.

E. C. Finney, *First Assistant Secretary.*

NOTICE OF DECISIONS TO COUNSEL RESIDENT IN WASHINGTON

Department of the Interior,
Office of the Secretary,
Washington, August 13, 1928.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: It has been represented to the department that decisions of your office involving lands in States where all local offices have been abolished are addressed and forwarded direct to the claimants, even though counsel resident in Washington has entered an appearance in the case.

Such practice is objectionable. (See Rule of Practice 88.)

If an attorney who has been admitted to practice before the department and the bureaus thereof has entered his appearance in a case, notice of the decision therein should be addressed to such attorney, and no notice given to the claimant.

If an attorney has filed an appeal, brief, argument, or other paper in a case, which he has signed as attorney for a party thereto, you will treat such attorney as having complied with Rule of Practice 89.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

AIRPORTS AND AVIATION FIELDS

[Reported, 52 L. D. 476]

CIRCULAR NO. 1161

REGULATIONS GOVERNING THE LEASING OF PUBLIC LANDS FOR AIRPORTS AND AVIATION FIELDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 22, 1928.

Registers, United States Land Offices.

SIRS: The following regulations are issued under the act of Congress approved May 24, 1928 (45 Stat. 728), entitled "An act to authorize the leasing of public lands for use as public aviation fields."

1. Any contiguous unreserved and unappropriated public land, surveyed or unsurveyed, not exceeding 640 acres in area, may be leased under the provisions of this act.

2. All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

3. Applications for lease should be in triplicate, addressed to the Commissioner of the General Land Office, and filed in the proper district land office. Applications will be limited to citizens of the United States, or associations of such citizens, to corporations organized under the laws of the United States or of any State or Territory thereof, and municipalities. No specific form of application is required, and no blanks will be furnished, but the application should include in substance the following points and be under oath:

(*a*) Applicant's name and post-office address.

(*b*) If a corporation, a certified copy of the articles of incorporation.

(*c*) If a city or town, evidence of authority of the mayor or other officer who may be authorized to execute such lease.

(*d*) Description of the land for which the lease is desired by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed.

4. After assignment of a current serial number and due notations on your records, you will forward all papers to the General Land Office. A status report of all the land applied for should be furnished with each application.

5. Upon receipt of the application in the General Land Office, one copy will be referred to the Secretary of Commerce for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Secretary of Commerce has reported, a lease in quadruplicate will be prepared and sent you for execution by the applicant. When executed and returned by you, the lease will be submitted to the Secretary of the

Interior, and, if approved, a copy will be sent to the applicant through your office and a copy forwarded to the Department of Commerce.

6. The lessee shall, within six months from the date of the lease, equip the airport as required by the Secretary of Commerce, and file a report thereof in your office for forwarding to the General Land Office.

7. At any time during the term of the lease the Secretary of Commerce may have an inspection made of the airport, and if it does not comply with the ratings set by the Department of Commerce that fact, with a statement as to wherein it fails, will be referred to the General Land Office for appropriate action.

8. The Secretary of the Interior may, in his discretion, cancel a lease issued under this act for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Department of Commerce, or shall fail to comply with these regulations or the terms of the lease.

9. Leases under this act shall be for a period not to exceed 20 years and may be renewed for like periods upon agreement of the Secretary of the Interior and the lessee.

10. Every lessee under this act shall pay to the lessor an annual rental of $10 per year. The first payment of $10 shall be made when the application is filed in your office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

11. The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Secretary of the Interior, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of War may assume full control of the airports.

12. The lessee will submit to the Secretary of Commerçe, for his approval, regulations to govern the use of the airport.

13. The lessor is authorized to cancel any lease for public lands for public aviation fields made under any law in force on the date of this act with the consent of the lessee and to lease such lands to the lessee under the conditions prescribed herein.

14. Government departments and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the same rules and regulations prescribed above, except no rental will be charged. They will be withdrawn by the Secretary of the Interior for that purpose on a sufficient showing of the necessity of a withdrawal for such purpose. However, to insure uniformity and centralized control over such facilities, all such applications will be referred to the Secretary of Commerce for consideration and comment.

15. While an application for a lease of not exceeding 640 acres of public lands for a public aviation field under sections 1, 2, and 3 of

the act will operate as a segregation of the lands described therein from the time such application is filed in the proper district land office, the Secretary of the Interior is given no authority to withdraw public lands for terminal airports. He may, however, withdraw such lands for beacon lights or other air navigation purposes, including emergency or intermediate landing fields between terminal airports. Such withdrawals may be made on his own motion or at the instance of the Department of Commerce or other Federal agencies, or lessees of terminal airports, or the applicants for such leases.

16. Prior to the approval of the act of May 24, 1928, public lands were subject to withdrawal by the President for public purposes, and the authority of the President to make such withdrawals is in no manner restricted by such act. Where, therefore, unappropriated public lands are desired by the Department of Commerce or other Federal agencies for airport terminals, requests for their withdrawal may be submitted to the Secretary of the Interior, for consideration by the President. All requests for withdrawal should specifically state whether the area is desired for beacon lights, emergency or intermediate landing fields, or terminal airports.

17. All the conditions contained in the prescribed form (4–455) of lease attached hereto, but not mentioned in these regulations, will be considered as a part hereof.

Very respectfully,

THOS. C. HAVELL, *Acting Commissioner.*

Approved August 22, 1928.

ROY O. WEST,
Secretary of the Interior.
WILLIAM P. MACCRACKEN, JR.,
Acting Secretary of Commerce.

(Form omitted.)

the act will operate as a segregation of the lands described therein from the time such application is filed in the proper district land office; the Secretary of the Interior is given no authority to withdraw public lands for terminal airports. He may, however, withdraw such lands for beacon lights or other air navigation purposes, including emergency or intermediate landing fields between terminal airports. Such withdrawals may be made on his own motion or at the instance of the Department of Commerce or other Federal agencies, or lessees of terminal airports, or the applicants for such leases.

16. Prior to the approval of the act of May 24, 1928, public lands were subject to *withdrawal* by the President for public purposes, and the authority of the President to make such *withdrawals* is in no manner restricted by such act. *Where*, therefore, unappropriated public lands are desired by the Department of Commerce or other Federal agencies for airport terminals, requests for their *withdrawal* may be submitted to the Secretary of the Interior, for consideration by the President. All requests for *withdrawal* should specifically state whether the area is desired for beacon lights, emergency or intermediate landing fields, or terminal airports.

17. All the conditions contained in the prescribed form (4–455) of lease attached hereto, but not mentioned in these regulations, will be considered as a part hereof.

Very respectfully,

Thos. C. Havell, *Acting Commissioner.*

Approved August 22, 1928.

Roy O. West,
Secretary of the Interior.

William P. MacCracken, Jr.,
Acting Secretary of Commerce.

(Form omitted.)

ALABAMA LANDS

[Reported, 1 L. D. 655, Rev. Ed.]

LANDS IN ALABAMA—COAL AND IRON

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 9, 1883.

GENTLEMEN: The act of March 3, 1883 (22 Stat. 487), enacts that all public lands within the State of Alabama, whether mineral or otherwise, shall be subject to disposal *only as agricultural lands;* provided, that all lands which have heretofore been reported as containing coal and iron shall first be offered at public sale, and, further, that any *bona fide* entry under the provisions of the homestead law of lands within said State *heretofore made* may be patented without reference to the act of May 10, 1872, in cases where the persons making application for such patents have in all other respects complied with the homestead law relating thereto.

In order to carry out the provisions of said act, it will be necessary to prepare a list of all public hands heretofore reported as mineral that have not been entered and have them offered by President's proclamation. In the meantime you will be careful not to allow an entry to be made for any lands lists of which were transmitted to your office October 23, 1879, nor of other tracts that have been since investigated and reported as valuable for minerals, a list of which I inclose herewith.

All existing *bona fide* entries, under the homestead laws, may be perfected regardless of the mineral character of the land, in accordance with rules and regulations governing the same.

Any contest pending before you where the *only* allegation is the mineral character of the land must be dismissed.

The law requires the offering to embrace all lands heretofore reported as containing coal or iron which remain undisposed of by entry or sale.

Entries, whether by cash or location, already allowed and reported to this office will be examined and disposed of upon their merits without reference to the question of mineral.

Very respectfully,

N. C. MCFARLAND, *Commissioner.*

TO DISTRICT LAND OFFICERS,
Montgomery and Huntsville, Ala.

Approved.

H. M. TELLER, *Secretary.*

(Act and list of lands omitted.)

[Reported, 41 L. D. 32]

CIRCULAR NO. 119

ALABAMA COAL LANDS—ACT OF APRIL 23, 1912—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 24, 1912.

REGISTER AND RECEIVER,
United States Land Office, Montgomery, Ala.

SIRS: The following instructions are furnished for your guidance in connection with the act of April 23, 1912 (37 Stat. 90), providing for homestead entry of withdrawn coal lands in Alabama, subject to the conditions of the act of June 22, 1910 (36 Stat. 583):

(1) The lands referred to in the act include all tracts which were prior to March 3, 1883, reported as containing valuable coal, and which were not under the provisions of the act of March 27, 1906 (34 Stat. 88), classified as agricultural in character.

(2) The circular of September 8, 1910 (39 L. D. 179), under the act of June 22, 1910, will govern proceedings with reference to these lands so far as applicable and except as herein modified.

(3) Prior to execution of a homestead application it must bear across its face the notation provided by paragraph 7 (*a*) of the circular of September 8, 1910. You are cautioned that this notation may not be placed by you upon the application after its execution and without applicant's consent. In the absence of the notation you will treat the application as incomplete, and will allow applicant the usual time to perfect same.

(4) A number of entries heretofore inadvertently allowed for coal lands have been suspended pending a possible offering of the various tracts involved under the provisions of the act of March 3, 1883 (22 Stat. 487). Under the proviso to section 1 of the act of June 22, 1910, these entries may be perfected, provided the claimants thereunder are willing to take patents containing the reservation as to the coal provided by paragraph 7 (*b*) of said circular.

You will, therefore, issue notice by registered letter to the claimants, advising them of the passage of the act of April 23, 1912, and of their rights to now obtain patents, limited as indicated, on condition that they furnish their written consent to receive such patents.

The widow, heirs, devisee, or transferee of a claimant under a final entry may execute the consent above called for, proper evidence being furnished of their rights in the premises. With reference to the entries on which proof has not been submitted, the consent may be executed by the person to whom the homestead right passes by law if the claimant himself is dead.

The instrument need not be acknowledged before an officer, but the claimant's signature should be witnessed by two persons.

You will in due time make report in each case separately, forwarding such papers as may be filed. If the consents are found to have been properly executed and no adverse claims appear, the cases on which final proof has been submitted will, if otherwise regular, be approved for patenting and patent, limited as indicated, will issue in due time. A list of the suspended cases is appended.[1]

(5) There is at this time no law which provides for the disposition of the coal in these lands. Persons having homestead entries, pending or perfected, obtain no right to mine coal therefrom except for their own domestic use, as appears from the first proviso to section 3 of the act of June 22, 1910.

(6) The second proviso to section 3 of the act of June 22, 1910, has no application to the Alabama lands, and claimants are not, therefore, entitled to contest the classification of the land and disprove its coal character.

Very respectfully,

Fred Dennett, *Commissioner.*

Approved.

Samuel Adams,
First Assistant Secretary.

(Act omitted.)

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[1] List omitted.

ALASKA

[Reported, 49 L. D. 207]

CIRCULAR NO. 845 [1]

COMPILATION OF REGULATIONS CONCERNING OIL AND GAS PERMITS AND LEASES UNDER THE ACT OF FEBRUARY 25, 1920, IN ALASKA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, August 12, 1922.

Registers and Receivers, United States Land Offices in Alaska.

SIRS: Under the authority of the act of Congress approved February 25, 1920 (41 Stat. 437), the following rules and regulations, taken from General Land Office Circular No. 672, entitled "Regulations concerning oil and gas permits and leases * * * authorized by the act of February 25, 1920," as amended to October 29, 1920 (47 L. D. 437), and as since from time to time amended, have been adopted to govern the administration of said act in so far as it applies specially to the Territory of Alaska; and the same renumbered and with incidental verbal modifications are recodified as follows for the information of those concerned:

1. *General provisions under section 13.*—Paragraphs 1 to 9 of Regulations as amended to October 29, 1920, as they appear in Circular No. 672 contain general provisions which govern permits under section 13 of the act. Alterations of paragraphs 7 and 8 to meet changed conditions are indicated below.

Extensions of time.—The provision in section 13 of the act providing for extension of the life of permits granted upon lands in the United States has been superseded by an act approved January 11, 1922 (42 Stat. 356), which provides that the Secretary of the Interior may, if he shall find that any oil or gas permittee has been unable, with the exercise of diligence, to begin drilling operations or to drill wells of the depth and within the time prescribed by section 13 of the act of Congress approved February 25, 1920 (41 Stat. 437), extend the time for beginning such drilling or completing it to the amount specified in the act for such time, not exceeding three years, and upon such conditions as he shall prescribe. Extensions of time may be granted thereunder in proper cases, both in Alaska and the United States, where applications therefor are filed in accordance with the Regulations, Circular No. 801,[a] approved March 9, 1922.

When an application for a lease of the one-fourth part of the area affected by a prospecting permit is submitted, supported by the requisite evidence of discovery and production of oil or gas, such application must be accompanied by further application by the permittee, or by an assignee of such permittee, for a lease of the remaining portion of the area described in the permit; or, in the alternative, a relinquishment of the permit and waiver of preference right in respect of such remaining area must be submitted.

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[1] Amended by Circular No. 905, p. 923.

[a] Circular No. 801 has been superseded by Circular No. 1147. See p. 965.

2. *Permits in Alaska.*[b]—Paragraphs 1 to 9, inclusive, of said Regulations as they appear in said Circular No. 672 will apply to permits in Alaska, under section 13 of the act, with some modifications, viz: .

(*a*) A person, association, or corporation is authorized to hold five permits at one time in said Territory—only one permit, however, in any one (1) geologic structure of a nonproducing field; but for development purposes (2) assignments to a qualified individual, corporation, or association outside producing oil or gas fields, for not exceeding five permits, whether contiguous or noncontiguous, may be presented for the consideration of the Secretary of the Interior and his approval if he shall find the same to be in the public interest; hence subdivision *c* of section 4 of the Regulations contained in said Circular No. 672 should be modified accordingly in making application for permits for lands in Alaska under section 13 of the act.

(*b*) The preference right treated under section 5 of the Regulations (Circular No. 672) extends for a period of six months after the erection of monument and posting of notice provided for therein, and the period for marking of the corners is extended to one year after the granting of the permit.

(*c*)[2] The time for exploratory work in Alaska is four years, instead of two. The various items necessary in this exploratory work are set forth in the form of permit provided in said Regulations (Circular No. 672), those applying to Alaska being included in parentheses (1). In cases where unsurveyed lands in Alaska are located in fields where compliance with paragraph 4(*d*) of Circular 672 with reference to public survey corners is not possible and conflicts may exist, the extent of which can not then be determined, permits are granted with the following additional conditions:

"7½. This permit is granted upon the express condition that the permittee will adjust any conflict with any prior applicant within six months from date hereof."

3. *Permits upon lands embraced in nonmineral entries.*—The act of Congress approved March 8, 1922 (42 Stat. 415), provides for the allowance of homesteads on lands in Alaska valuable for coal, oil, or gas, with reservations of such deposits and upon conditions similar to those of the act of July 17, 1914 (38 Stat. 509), relating to lands in the United States, and the provisions of paragraph 11 of said Circular No. 672 will apply to Alaska in cases where entries are patented with a reservation under said act of March 8, 1922.

4. *Preference right of owner of surface.*—Nonmineral claimants upon lands in Alaska are entitled to preference right permits under section 20 of the act wherever the mineral deposits are reserved under the act of March 8, 1922 (42 Stat. 415), under the conditions indicated in paragraph 12 and subsections thereunder of Circular No. 672.

5. *Relief measures—Alaska claims—Conditions for relief under section 22:*

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[b] See Circulars Nos. 1073, p. 937, and 1129, p. 962.

[2] See amendment, p. 923.

A. *For permit.*—(*a*) That claimant must have been an occupant or claimant of the land on February 25, 1920, under a claim initiated under the placer mining laws by claimant or predecessors prior to November 3, 1910, the date of the Executive order withdrawing all public lands in Alaska containing petroleum deposits, including those in national forests.

(*b*) That claimant must have performed all acts prior to November 3, 1910, under the then existing laws necessary to valid locations except to make discovery.

(*c*) That claimant (1) prior to November 3, 1910, must have made substantial improvements for the discovery of oil or gas on or for each location, or (2) prior to February 25, 1920, expended not less than $250 for improvements on or for the benefit of each location.

(d) That claimant must on or before February 25, 1921, or within six months after final denial or withdrawal of application for patent, file a relinquishment to the United States of all right, title, and interest in and to the land. This relinquishment must be in the form of an unconditional quitclaim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

In addition to the above, the conditions outlined in paragraph (*e*) of section 20 of the Regulations (Circular 672) are applicable to relief in Alaska.

B. *For lease.*—The conditions necessary to obtain a lease under section 22 of the act are identical with those outlined in the paragraphs relating to permits in Alaska together with the following additional conditions:

(*a*) That claimant or predecessors must have drilled an oil or gas well on the land to discovery.

(*b*) That claimant must pay for one-eighth of the past production exclusive of that used on the land for production purposes or unavoidably lost.

6. *Relief that may be granted under section 22:*

(*a*) A claimant qualified under the above conditions relating to permits, upon complying with the conditions of the act and these regulations, will be entitled to prospecting permits under the same terms and conditions as other permits in Alaska provided for in section 13 of the act, substantially in the form prescribed in section 6 of the Regulations (Circular No. 672).

(*b*) A claimant qualified under the above conditions relating to leases is entitled to a lease substantially in the form prescribed in section 17 of the Regulations (Circular No. 672), the rental and royalty to be fixed by the Secretary of the Interior and specified in the lease, subject to readjustment at the end of each 20-year period of the lease.

(*c*) A claimant under section 22 of the act shall be entitled to not exceeding five permits or leases in number and not exceeding an aggregate of 1,280 acres in each.

7. *Royalties and rentals on oil and gas leases in Alaska:*

The royalties and rentals payable under oil and gas leases granted in Alaska pursuant to sections 14 and 22 of the act of February 25, 1920, are hereby determined and prescribed as follows:

(*a*) For leases granted under section 22 of the act, the royalty shall be: (1) For the first five years from and after the date of the lease no royalty, except in case of leases whereon the producing wells yield an average of 100 barrels or more per well per day for the calendar month, in which event the royalty shall be 5 per cent of all oil produced; (2) for the second period of five years from and after the date of each lease, under section 22 of the act, the royalty upon all leases shall be 5 per cent; (3) for the succeeding 10 years the royalty upon all leases under section 22 of the act shall be 10 per cent of all oil produced.

(*b*) Upon leases granted in Alaska, under section 14 of the act, the permittee who discovers oil will be entitled to a lease for one-fourth of the area of the permit without payment of royalty for the first five years succeeding the date of the lease and thereafter shall pay a royalty of 5 per cent upon all oil produced. On the remaining lands included within the area of the permit, the permittee will be given a preference right to a lease without payment of royalty for the first five years succeeding the date of the lease, except in the case of leases whereon the producing wells yield an average of 100 barrels or more per well per day for the calendar month, in which event the royalty shall be 5 per cent; for the second five years, the lessee will be required to pay a royalty of 5 per cent upon all oil produced, and for the succeeding 10 years, a royalty of 10 per cent upon all oil produced.

(*c*) No royalty will be charged in any case upon leases wherein the wells upon the lands average less than 10 barrels per well per day for the calendar month.

(*d*) No rental upon any oil or gas lease in Alaska will be charged during the first five years succeeding the date of the lease. After the expiration of the first five years succeeding the date of the lease, a rental of 10 cents per acre per annum will be charged on all leases, payable in advance: *Provided*, That the rentals so paid for any one year shall be credited upon the royalties accruing for that year.

(*e*) The royalties on gas produced, if any, will be fixed and determined in each lease.

(*f*) The foregoing subsections (*a*) to (*c*), inclusive, are applicable to cases where but one permit area in a single field or structure is held by the permittee or lessee. Where one or more additional permits, not exceeding five, are secured by assignment, the rentals and royalties on one of the permits shall be as prescribed in classes *a*, *b*, *c*, and *d* of this paragraph, and upon the remaining areas secured by assignment the rentals and royalties shall be as provided in paragraph 8 of the said regulations approved March 11, 1920, amended October 29, 1920, unless modified in a proper case when such a permit or lease is granted or approved.

8. *Permits for deposits reserved under the act of March 8, 1922 (42 Stat. 415)*.—The provisions relative to reserved deposits under the act of July 17, 1914 (38 Stat. 509), indicated on page 34 of Circular No. 672, will be incorporated in permits in Alaska in proper cases without change other than the substitution of "act of March 8, 1922 (42 Stat. 415)" for, "act of July 17, 1914 (38 Stat. 509)," and the bond required will be identical with that indicated on pages 34 and 35 of said Circular No. 672, except for the substitution of the act of March 8, 1922, *supra*, as above indicated.[2a]

[2a] The page numbers given are pages in Circular No. 672 as issued in pamphlet form, reproduced on page 896 hereof.

9. *Procedure in relation to agricultural claims in conflict with permits or leases, or subject to preferential rights.*—The procedure indicated in Circular No. 842,[c] approved July 31, 1922, with reference to nonmineral entries made with a reservation of the oil and gas to the Government, will be followed where entries are made pursuant to the act of March 8, 1922 (42 Stat. 415).

10. *In general.*—The general regulations as contained in said Circular No. 672, and as since modified or amended, are to be regarded, in so far as they are appropriate and are not modified by any rule or regulation herein, as regulations affecting oil and gas permits and leases in Alaska, under said act of February 25, 1920.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved Aug. 12, 1922.

ALBERT B. FALL, *Secretary.*

[Reported, 51 L. D. 50]

CIRCULAR No. 979 [2b]

NOTATION OF CANCELLATION OF OIL AND GAS PERMITS IN ALASKA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 12, 1925.

Registers and Receivers, United States Land Offices in Alaska.

GENTLEMEN: Hereafter the cancellation of an oil and gas permit in Alaska will be made effective on a certain date specified by the letter of cancellation, but no application will be allowed for a period of 62 days from and after such date of cancellation.

During this 62-day period applications for permits will be received by the proper local land office and held without action, and during the same period a claim may be initiated by locating, marking and posting on the land as provided by section 13 of the leasing act.

All applications filed during said period shall be treated as having been filed at 9 a. m., on the sixty-third day and will be disposed of by a drawing held publicly by you at 12 m. of said sixty-third day.

The successful applicant will be advised of the result of the drawing, but the application will be held suspended until the expiration of six months from date of drawing when if no application based upon proper marking and posting within the 62 days following cancellation has been presented, you will allow the successful applicant to complete his application and forward it to this office with your report.

If an application based on proper location, marking and posting the land within the 62-day period is presented within six months from the date of such location, marking and posting, the applicant thereunder will have prior right to the land and his application will be allowed and that of the successful applicant at the drawing rejected subject to right of appeal. As between two or more applications, timely filed, based on posting the land during the 62-day period, priority of posting will determine priority of right to a permit. Attention is also called to Circular No. 966.

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[c] Circular No. 842 has been omitted from this publication. The present governing instructions are included in Circular No. 491, under the heading "Homesteads on Coal, Oil, and Gas Lands, p. 216, et seq.

[2b] See Circulars Nos. 929, p. 926; 939, p. 929; 966, p. 931; and 1084, p. 939.

Circular No. 929 is modified so far as it conflicts with the regulations herein.

Very respectfully,

William Spry, *Commissioner.*

Approved February 12, 1925.

E. C. Finney, *First Assistant Secretary.*

[Reported, 52 L. D. 262]

AMENDING CIRCULAR 1108, REGULATIONS GOVERNING FUR FARMING IN ALASKA

Department of the Interior,
General Land Office,
Washington, January 30, 1928.

Register and Division Inspector, Anchorage, Alaska; Registers and Receivers, Fairbanks and Nome, Alaska.

Gentlemen: Circular No. 1108,[d] approved January 22, 1927, is hereby amended by inserting after, " The following rules and regulations will govern the issuance of leases under said act," the following:

Leases under this act may cover an entire island where such island contains an area of not more than 30 square miles, if the inspector reports that such island is subject to lease for fur farming, and that the entire area is needed and can be properly used therefor.

Any islands subject to lease under this act having an area of more than 30 square miles will be treated as mainland, and leases for lands within same shall not be awarded for an area in excess of 640 acres.

Where islands are so close together that animals can cross from one to the other, and the combined area does not exceed 30 square miles, more than one island may be included in a single lease.

Very respectfully,

Thos. C. Havell,
Acting Commissioner.

Approved January 30, 1928.

E. C. Finney,
First Assistant Secretary.

Circular No. 491 [3]

INFORMATION AND REGULATIONS RELATING TO PUBLIC LANDS IN THE TERRITORY OF ALASKA

Department of the Interior,
General Land Office,
Washington, D. C., February 24, 1928.

Scope of this Publication

This publication contains the text of the principal public land statutes [e] and regulations thereunder which are applicable exclusively

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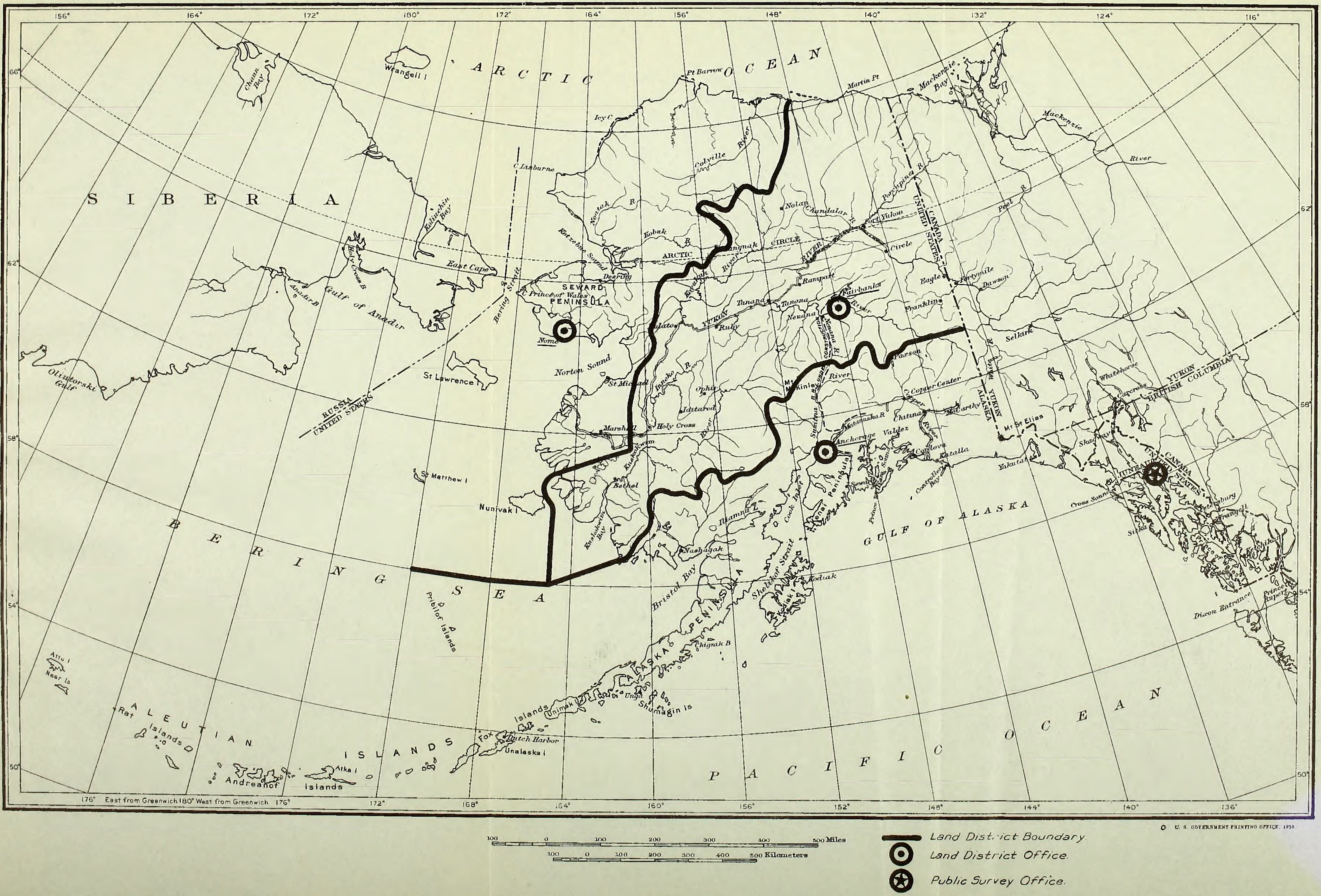
[3] Amended by Circulars Nos. 1181, p. 277; 1183, p. 278; 1184, p. 279; 1198, p. 282; and 1203, p. 284. See also instructions of Jan. 30, 1928, p. 190.

[d] See footnote 5, p. 201.

[e] Acts omitted in this compilation.


ARCTIC OCEAN
SIBERIA
BERING SEA
PACIFIC OCEAN
GULF OF ALASKA
ALEUTIAN ISLANDS
ALASKA PENINSULA
SEWARD PENINSULA
Kenai Peninsula
Wrangell I
Chaun Bay
Pt Barrow
Martin Pt
Mackenzie Bay
Mackenzie River
Icy C
C Lisburne
Colville River
Noatak R
Kobuk R
Kotzebue Sound
Nolan
Chandalar R
Fort Yukon
Porcupine R
Peel R
ARCTIC CIRCLE
Koyukuk River
Kolutschin Bay
Holy Cross B
Anadir B
Gulf of Anadir
East Cape
Bering Strait
C Prince of Wales
Deering
Nome
Norton Sound
St Michael
St Lawrence I
Olintorski Gulf
RUSSIA
UNITED STATES
CANADA
UNITED STATES
ALASKA
YUKON
BRITISH COLUMBIA
Circle
Rampart
Eagle
Fortymile
Dawson
Franklin
Tanana
Fairbanks
Nenana
Ruby
Nulato
YUKON RIVER
Innoko R
Ophir
Iditarod
Marshall
Holy Cross
Kuskokwim
Bethel
Kuskokwim Bay
Nushagak
Bristol Bay
Iliamna L
Cook Inlet
Shelikof Strait
Kodiak
Kodiak I
Chignik B
Unga
Shumagin Is
Unimak
Fox Islands
Dutch Harbor
Unalaska I
Atka I
Andreanof Islands
Rat Islands
Near Is
Attu I
Pribilof Islands
St Matthew I
Nunivak I
Mt McKinley
Susitna R
Matanuska R
Anchorage
Valdez
Seward
Prince William Sound
Cordova
Katalla
Controller Bay
Chitina
McCarthy
Copper R
Copper Center
Tanana River
Paxson
Selkirk
Whitehorse
Caribou Crossing
Skagway
Mt St Elias
Yakutat
Cross Sound
Juneau
Sitka
Petersburg
Wrangell
Ketchikan
Prince Rupert
Dixon Entrance
156°
164°
172°
180°
172°
164°
156°
148°
140°
132°
124°
116°
66°
62°
58°
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50°
176°
East from Greenwich 180° West from Greenwich
176°
172°
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164°
160°
156°
152°
148°
144°
140°
136°
100 0 100 200 300 400 500 Miles
100 0 100 200 300 400 500 Kilometers
Land District Boundary
Land District Office
Public Survey Office

U. S. GOVERNMENT PRINTING OFFICE: 1928

to Alaska, also a reference to many other laws and regulations which apply to Alaska, and, for convenient reference, the subjects have been arranged in alphabetical order as follows:

Coal lands, contest, ex officio commissioner, forms, fur-farming leases, grazing leases, homesteads, Indians and Eskimos, landing and wharf permits, laws, mineral lands, mission sites, offices, parks and cemeteries, patents, public lands, rights of way, school lands and scrip locations, shore space, soldiers' additional homestead entries, springs and water holes, surveys, timber, town sites, trade and manufacturing sites, water-power lands.

GENERAL PUBLICATIONS

Reference is made in this publication to many circulars which have been issued under the public land statutes of a general nature, which are applicable in the United States, including Alaska. Copies of these pamphlets may be obtained by addressing the Commissioner of the General Land Office, Washington, D. C.

OTHER PUBLICATIONS ON ALASKA

General information regarding the Territory of Alaska.—This pamphlet may be obtained from the Secretary of the Interior, Washington, D. C. It contains a general description of the Territory and a summary of the principal resources. It also contains references to more detailed publications.

Information for prospective settlers in Alaska, Circular No. 1, Alaska Agricultural Experiment Stations.—This circular may be obtained from the Department of Agriculture, Washington, D. C. It is designed to give prospective settlers in Alaska, and particularly homesteaders, information on subjects which will be of more or less vital interest to them. It is designed also to call their attention to many factors in the situation on which they should be informed before settling in a new and comparatively little-known territory.

COAL LANDS

The President of the United States is required by section 2 of the act of October 20, 1914 (38 Stat. 741), to " designate and reserve from use, location, sale, lease, or disposition, not exceeding 5,120 acres of coal-bearing land in the Bering River field, and not exceeding 7,680 acres of coal-bearing land in the Matanuska field," before opening the fields under the provisions of the act. The unreserved coal lands are thereafter to be " divided by the Secretary of the Interior into leasing blocks or tracts of 40 acres each or multiples thereof, and in such form as, in the opinion of the Secretary, will permit the most economical mining of the coal in such blocks, but in no case exceeding 2,560 acres in any one leasing block or tract." The lands having been thus divided into leasing blocks, the Secretary under the act is authorized, then and not before, to offer such blocks or tracts for leasing and award leases thereof through such plan as he may adopt, either by advertisement, competitive bidding, or otherwise.

It is recognized that if the Government were to reserve the total acreage allowed by law and were to select those areas that are believed to be best suited for profitable mining the result might be to prevent effectually coal mining in Alaska until such time as the Government itself might undertake mine development and operation.

The intention of Congress in passing the Alaska coal-leasing law is believed to have been the promotion of the mining of coal in the Territory as early as possible to meet the demands of the Government railroad, the Navy, and Alaskan consumers. The legal provision for Government reservation furnishes a means for safeguarding the public interest in the future, when lack of competition or other exigency may necessitate Government operation. The tracts now selected for reservation in accord with this policy are therefore such as are believed to possess the average rather than the highest value.

The President has therefore designated and reserved from use, location, sale, lease, or disposition the lands described as follows:

Lands reserved in Matanuska field, Seward base and meridian

(1) T. 19 N., R. 6 E.: N. ½ NE. ¼ and N. ½ NW. ¼ sec. 4;
NE. ¼ NE. ¼, W. ½ NE. ¼ and NW. ¼ sec. 5.
T. 20 N., R. 6 E.: Lot 6 and E. ½ SE. ¼ sec. 31;
Lots 4, 5, 6, and 7 and SE. ¼ and SW. ¼ sec. 32;
Lots 3, 4, 5, and 6, S. ½ SE. ¼, SW. ¼ sec. 33, containing 1,446.17 acres.
(2) T. 20 N., R. 5 E.: NE. ¼, SE. ¼, E. ½ NW. ¼ and E. ½ SW. ¼ sec. 20;
NW. ¼, SW. ¼, SE. ¼ and S. ½ NE. ¼ sec. 21;
SW. ¼ and S. ½ NW. ¼ sec. 22;
NW. ¼ sec. 27;
NE. ¼ and NW. ¼ sec. 28;
E. ½ NE. ¼ and NW. ¼ NE. ¼ sec. 29, containing 1,880 acres.

Lands reserved in Bering River field, Copper River base and meridian

(3) T. 16 S., R. 8 E.: Secs. 23 and 24, containing 1,280 acres.
(4) T. 16 S., R. 8 E.: NE. ¼, SE. ¼ and SW. ¼, sec. 33.
T. 17 S., R. 8 E.: N. ½ NW. ¼ sec. 3;
All of sec. 4;
E. ½ NE. ¼ and E. ½ SE. ¼ sec. 5;
E. ½ NE. ¼ sec. 8;
N. ½ NW. ¼ sec. 9, containing 1,520 acres.
(5) T. 17 S., R. 7 E.: Lot 3 and SE. ¼ SE. ¼ sec. 8;
Lots 1 and 2, SE. ¼ NW. ¼, SW. ¼ and W. ½ NE. ¼ sec. 9;
NW. ¼ NW. ¼ sec. 16;
SE. ¼, NE. ¼, NW. ¼ and W. ½ SW. ¼ sec. 17;
NE. ¼, SE. ¼, SE. ¼ NW. ¼, E. ½ SW. ¼ and lots 3 and 4 sec. 18, containing 1,556.98 acres.

In addition to these tracts, the President, June 18, 1917, designated and reserved, in the Matanuska field, Seward base and meridian, coal leasing block No. 12, as follows:

T. 20 N., R. 5 E.: S. ½ SE. ¼, sec. 24;
NE. ¼, sec. 25.
T. 20 N., R. 6 E.: S. ½ SW. ¼, sec. 19;
NW. ¼, sec. 30, containing 480 acres.

December 5, 1917, the President designated and reserved, in the Matanuska field, Seward base and meridian, coal leasing block No. 7, as amended, as follows:

T. 19 N., R. 3 E.: E. ½ SE. ¼, sec. 8;
S. ½, sec. 9;
SW. ¼, sec. 10;
NW. ¼, sec. 15;
N. ½ SW. ¼, N. ½ SE. ¼, sec. 16, containing 1,280 acres

January 26, 1918, the President designated and reserved, in the Nenana field, Fairbanks base and meridian, the following tracts:

T. 11 S., R. 7 W.: SE. ¼ SE. ¼, sec. 29;
All sec. 32.
T. 12 S., R. 7 W.: S. ½ NW. ¼, SW. ¼, sec. 4;
All sec. 5, containing 1,560 acres.

All of the coal land in the remainder of these fields is open to application for lease, and none of this open territory will be withdrawn or reserved while there is any bona fide application for a lease thereon.

LEASING BLOCKS

As noted in the foregoing statement the *unreserved* lands in the coal fields must be divided by the Secretary into leasing "blocks" or "tracts" before he can make a leasing offer. A survey of said lands in accordance with the system of public-land surveys is therefore necessary, as the act requires each leasing block or tract to be described by subdivisions of the survey. To this end such a survey of the Bering River and Matanuska fields has been made and the known coal lands in those fields divided into leasing blocks.

Coal Mining Leases

By authority of the act of Congress approved October 20, 1914 (38 Stat. 741), the unreserved surveyed coal lands in the Bering River and the Matanuska coal fields, Alaska, have been divided into leasing blocks, or tracts, of 40 acres, or multiples thereof, and leases of such blocks or tracts, with the privilege of mining and disposing of the coal, lignite, and associated minerals therein may be procured from the United States in the following manner:

APPLICATION—MAPS

1. On request addressed to the Commissioner of the General Land Office at Washington, D. C., a blank application (Form 4–031) and lease (Form 4–031a) will be furnished the applicant; also, those who desire may procure from the Superintendent of Documents, Government Printing Office, Washington, D. C., a folio containing photolithographic copies of the approved plats of the topographic and subdivisional township surveys of the Matanuska field (13 townships) for $1, and of the Bering River field (8 townships) for 75 cents.

QUALIFICATIONS OF APPLICANTS

2. Under this act the qualifications of such lessees are defined as follows:

(*a*) Any person above the age of 21 who is a citizen of the United States.

(*b*) Any association of such persons (that is, citizens of the United States over 21 years of age).

(*c*) Any corporation or municipality organized under the laws of the United States, or of any State or Territory thereof, "*Provided*, That a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States."

AREA

3. The total area that may be embraced in one lease is fixed at 2,560 acres, which may include one or more contiguous leasing blocks, or tracts, as shown on the map; and no person, association, or corporation is permitted to take or hold any interest as a stockholder or otherwise in more than one lease under this act.

APPLICATION

4. The application blank calls for information as to the name of the applicant, a description of the leasing block or blocks desired, amount of capital proposed as an investment under the lease, time when actual development under the lease will begin, experience in coal mining, and reference as to financial standing.

METHOD OF AWARD

5. The statute under which these proceedings are authorized provides that the Secretary of the Interior may award leases "through advertisement, competitive bidding, or such other methods as he may by general regulation adopt," and the purpose of the applications required herein is to procure such information as will best enable the Secretary to award leases so as to procure the best terms on behalf of the United States and the most effective development of the coal deposits of the Territory.

PUBLICATION

6. All applications will be promptly listed and the proposed terms thereunder will be noted. Thereafter due publication at the expense of the Government for not less than once a week for a period of 30 days will follow in at least two newspapers of general circulation, one of which shall be published in the Territory of Alaska and one in the United States proper, of the applications filed, each to be designated by a number and not by the name of the applicant, the block or blocks applied for, with the announcement that at the expiration of the period of publication the said applications will be taken up and the proposals therein considered, subject to any better terms that may be offered by any other qualified applicant during the period of publication, or by the first applicant.

AWARD OF LEASE

7. All applications for a lease, or proposals in connection therewith, pending at the expiration of the period of publication will be submitted to the Secretary of the Interior in one report, with specific recommendations as to the awards that should be made or denied under the several applications or proposals; and thereafter such action will be taken by the Secretary on the report as may in his discretion seem warranted on the showing made in each case, by which he will obtain the largest investment proportionate to the acreage of the lease, and the earliest actual development of the coal mine on a commercial basis, reserving the right to modify proposed leasing blocks or tracts if the economical mining of the coal will

better be procured thereby, or finally to reject any or all applications if, in his judgment, the interests of the United States so require.

INVESTMENT AND BOND

8. An actual, bona fide expenditure on the land for mine operation, development, or improvement purposes of $100 for each acre included in the lease is adopted as the minimum basis for granting leases, with the requirement that not less than one-fifth of the required investment shall be expended in development of the mine during the first year and a like amount each year for the four succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. If the investment to be made is fixed at more than $50,000, the lessee shall furnish a bond with approved corporate surety in the sum of $10,000, conditioned upon the expenditure of the specified amount of investment and upon compliance with the other terms of the lease. If the investment is fixed at $50,000 or less, a bond similarly conditioned in the sum of $5,000 must be furnished. After the required investment has been made the lessee may substitute in lieu of the bond originally furnished a like bond in the sum of $5,000 conditioned upon compliance with the terms of the lease.

In lieu of corporate surety the applicant may deposit United States bonds of a par value equal to the amount of his bond, pursuant to section 1320 of the act of February 24, 1919 (40 Stat. 1057–1148–49), under Treasury Circular No. 154, of June 30, 1919. When United States bonds are thus submitted, the same shall be accompanied by a bond and power of sale duly executed by the applicant.

ADDITIONAL LEASING BLOCKS

9. Lands found to contain coal but not divided into leasing blocks may be hereafter divided into such blocks, and the lands therein made the subject of a leasing offer, the rights of adjacent lessees to be given due consideration in any award that may be made under such offer.

USE OF TIMBER

10. The use of timber by the lessee, in addition to that taken from the leasehold under the terms of the lease, may be secured by him from other lands not embraced in leasing units in accordance with the regulations that may be prescribed by the Secretary of the Interior under the act of May 14, 1898 (30 Stat. 414), and the acts amendatory thereof, or by arrangement with the Department of Agriculture if from a national forest.[4]

COAL-MINING PERMIT FOR FREE USE OF COAL

The following regulations will govern the issuance of permits for the free use of coal in the unreserved public lands in Alaska, under section 10 of the act of October 20, 1914 (38 Stat. 741), except that the regulations will not apply to coal lands in the Bering or Matanuska coal fields which have been surveyed into leasing blocks or tracts or to fields where mines are being operated under lease:

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[4] See p. 256.

QUALIFICATIONS

1. Under the terms of the act, expressed in section 3 thereof, only citizens of the United States above the age of 21 years, associations of such citizens, corporations, and municipalities, organized under the laws of the United States or of any State or Territory thereof, provided the majority of the stock of such corporations shall at all times be owned and held by citizens of the United States, are eligible to receive a permit to prospect for and mine coal from the unreserved public lands in Alaska.

WHO MAY MINE COAL FOR SALE

2. All permittees may mine coal for sale except railroads and common carriers, who by the terms of section 3 of the act are restricted to the acquirement of only such an amount of coal as may be required and used for their own consumption.

DURATION OF PERMITS

Permits will be granted for two years, beginning at date of filing, if filed in person or by attorney, or date of mailing, if sent by registered letter, subject to the approval of the Commissioner of the General Land Office, and upon application and satisfactory showing as to the necessity therefor, may be extended by the commissioner for a longer period, subject to such conditions necessary for the protection of the public interest as may be imposed prior to or at the time of the extension. Misrepresentation, carelessness, waste, injury to property, the charge of unreasonable prices for coal, or material violation of such rules and regulations governing operation as shall have been prescribed in advance of the issuance of a permit, will be deemed sufficient cause for revocation.

LIMITATION OF AREA

4. The act limits the area to be covered in any one permit to 10 acres. It is not to be inferred from this, however, that the permits granted thereunder shall necessarily cover that area. The ground covered by a permit must be square in form and should be limited to an area reasonably sufficient to supply the quantity of coal needed.

SCOPE OF PERMIT

5. Permits issued under section 10 of the act of October 20, 1914, grant only a license to prospect for, mine, and remove coal free of charge from the unreserved public coal lands in Alaska, and do not authorize the mining of any other form of mineral deposit, nor the cutting or removal of timber.

HOW TO PROCEED TO OBTAIN A PERMIT

6. The application should be duly executed on Form 4-020, and the same should either be transmitted by registered mail to or filed

in person with the register and receiver of the United States land office of the district in which the land is situated. Prior to the execution of the application the applicant must have gone upon the land, plainly marked the boundaries thereof by substantial monuments, and posted a notice setting forth his intention of mining coal therefrom. The application must contain the statement that these requirements have been complied with and the description of the land as given in the application must correspond with the description as marked on the ground. The permit, if granted, should be recorded with the local mining district recorder, if the land is situated within an organized mining district.

WHEN COAL MAY BE MINED BEFORE ISSUANCE OF A PERMIT

7. In view of the fact that by reason of long distances and limited means of transportation many applicants may be unable to appear in person at the United States land office to file their applications, it has been deemed advisable to allow such applicants the privilege of mining coal as soon as their applications have been duly executed and sent by registered mail to the proper United States land office. Should an application be rejected, upon receipt of notice thereof all privileges under this paragraph terminate and the applicant must cease mining the coal.

ACTION BY REGISTER

8. The register will keep a proper record of all applications received and all actions taken thereon in a book provided for that purpose. If there appear no reason why the application should not be allowed, the register will issue a permit on Form 4–020a. Should any objection appear either as to the qualifications of the applicant or applicants, or in the substance or sufficiency of the application, the register may reject the application or suspend it for correction or supplemental showing under the usual rules of procedure, subject to appeal to the Commissioner of the General Land Office. Upon the issuance of a permit the register will promptly forward to the Commissioner of the General Land Office by special letter the original application and a copy of the permit and transmit copies thereof to the division inspector and to the local representatives of the United States Bureau of Mines for their information.

If application is filed for free permit or for renewal of an existing free permit under section 10 of the act of October 20, 1914, involving land within a field within which there are mines being operated under the leasing provisions of the said act, the register will transmit such application to the Commissioner of the General Land Office without action but with appropriate recommendation, calling special attention to the possibility of its competition with existing Government leases.

The Nenana Field

A complete topographic and subdivisional township survey of the Nenana field is contained in Geological Survey Bulletin 664, copies of which may be procured on application to the Superintendent of Documents, Washington, D. C., for $1.10.

Coal Prospecting Permits

As the act of October 20, 1914 (38 Stat. 741), contained no provision for prospecting permits (which are to be distinguished from mining permits), it was amended March 4, 1921 (41 Stat. 1363), by adding to section 3 a proviso authorizing the issuance of prospecting permits.

The following regulations will govern the issuance of permits under the act of March 4, 1921:

CHARACTER OF LANDS

1. Permits may be issued to prospect unclaimed, undeveloped areas in Alaska where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

TO WHOM PERMITS MAY ISSUE

2. Permits may be issued to any person above the age of 21 years who is a citizen of the United States, or to any association of such persons, or to any corporation or municipality organized under the laws of the United States or any State or Territory thereof, provided that a majority of the stock of such corporation shall at all times be owned and held by citizens of the United States.

AREA

3. Permits may be issued for tracts of not exceeding 2,560 acres of contiguous lands in reasonably compact form.

RIGHTS CONFERRED

4. A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

APPLICATION FOR PERMIT

5. Applications for permits shall be filed in the proper district land office, and after due notice thereof on the records forwarded to the General Land Office with report of status of the land affected. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship and qualification as to stock ownership if a corporation.

(*c*) Description of land for which a permit is desired, by legal subdivisions, if surveyed, and by metes and bounds and such other description as will identify the land if unsurveyed. If unsurveyed, a survey sufficient to identify more fully and segregate the land may be required before permit is granted.

(*d*) Condition of coal occurrences, so far as determined, description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal.

(*e*) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(*f*) A brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

The application must be under oath of the applicant or his attorney in fact, or, if a corporation, of one of its officers theretofore duly authorized.

(*g*) After a permit is ready for delivery, the permittee will be notified and allowed 30 days within which to furnish a bond, with approved corporate surety or two qualified individual sureties, in the sum fixed by the Secretary when the permit is granted, but not to exceed $500, conditioned upon compliance with the terms of the permit and against failure of the permittee to use reasonable precautions to prevent damage to the coal deposits or to leave the premises in a safe condition upon the termination of the permit. With bonds signed by individual sureties, must be filed affidavits of justification by the sureties that each is worth double the sum specified in the undertaking over and above his just debts and liabilities and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a postmaster, as to the identity, signatures, and financial competency of the sureties. Bond with additional obligations therein will be required where the permit embraces lands entered or patented with the coal reserved under the act of March 8, 1922 (42 Stat. 415).

FORM OF PERMIT

6. On receipt of the application, if found sufficient and the lands subject thereto, a permit will be issued on Form 4–031b, of which the district land office will be advised.

LEASES TO PERMITTEES

7. A qualified permittee who has shown, within the period of the permit, that the land included therein contains coal in commercial quantities will be entitled to a lease for such land, or part thereof as the permittee may desire, upon due application and publication of notice thereof. The application for lease should be filed in the proper district land office before expiration of the period of the permit. An application for lease under this section should describe the land desired and set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit. Such leases will be granted, without competitive bidding, on rents and royalties to be fixed by the Secretary of the Interior, and otherwise substantially in the form of lease provided herein governing coal-land leases in Alaska.

CONTESTS

Contests against entries of public lands in the Territory of Alaska may be initiated by private persons or on the part of the Government in the same manner as such proceedings are begun elsewhere in the United States.

The procedure in such cases will be governed by the Rules of Practice, copies of which may be obtained on application to the Commissioner of the General Land Office. The last revision of the Rules of Practice will be found in volume 51 of Land Decisions, beginning page 547.

Paragraph 4 of the instructions of May 21, 1908 (36 L. D. 433), relating to contests against homestead locations, provides as follows:

> Homestead locations of lands in the District (Territory) of Alaska may be contested and canceled upon any ground which would warrant the cancellation of a homestead entry of land elsewhere made under section 2289, R. S.; and contests of this character may be initiated at the proper United States land office by either the Government or any private person, and should be proceeded with in the same manner and given the same effect as contests against homestead entries elsewhere.

Where a final decision has been rendered in a contest proceeding canceling a homestead location, the register will secure the notation of such judgment on the record of the location in the recording office.

Ex Officio Commissioner for Department of the Interior[f]

1. The ex officio commissioner will have authority to coordinate and supervise the work of the several activities of the General Land Office in Alaska.

2. All officers and employees of the General Land Office in Alaska having for consideration any budgetary matter or matter involving the proposed scope and allocation of work to be done in Alaska should take the same up with the said ex officio commissioner, who will transmit the same with appropriate recommendation to this office.

ACTION ON APPLICATIONS, PETITIONS, ETC.

3. All applications, petitions, etc., involving claims in Alaska arising under the public land laws will be presented to and acted upon by the proper register and receiver in Alaska in the future in like manner as heretofore. The register and receiver, however, instead of transmitting the returns of such applications, petitions, etc., semimonthly to the General Land Office, will forward the returns semimonthly to the ex officio commissioner, or some one duly authorized to represent him in Alaska, who will examine the papers in each case as soon as possible for possible defects in form, execution, or otherwise, and for possible errors by the register and receiver in their actions or decisions.

If any defect or error is found in any particular case or cases included in the semimonthly returns, and such defects or errors may be cured either by the applicant or the register and receiver, such cases shall be taken from the semimonthly returns and forwarded to the register and receiver with whatever suggestions or instructions the ex officio commissioner or his representative deems proper. A note opposite the serial number or numbers of the cases so forwarded should be made on the schedule of returns, and it, with the balance of the cases to which no objection is found, should be forwarded immediately by the ex officio commissioner or his representative to the Commissioner of the General Land Office.

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[f] The instructions under this heading are based on Circular No. 1140, not carried in this publication.

Should there be any case or cases in which the defect or error can not be cured or corrected, the ex officio commissioner or his representative will make such recommendation as he may deem advisable and transmit the same with the semimonthly returns in which they are listed to the Commissioner of the General Land Office.

LIST OF FORMS APPLICABLE EXCLUSIVELY IN ALASKA

Subject	Form No.
Coal:	
Application for permit for free mining of	4–020
Permit authorizing free mining of	4–020a
Coal lands:	
Application for mining lease of	4–031
Mining lease of	4–031a
Mining lease of, bond under	4–692
Coal prospecting permit	4–031b
Fur farming, lease of lands for	4–230
Grazing permit or lease, application for	4–469
Grazing lease	4–470
Indian or Eskimo:	
Application by, for allotment	4–021
Certificate of allotment to	4–203
Application by, for deed to town tract	4–231
Trustee's deed to, for town tract	4–232
Deed of	4–232a
Oil and gas prospecting permit	4–208c
Timber:	
Application to purchase	4–023
Cut, report	4–023a
Permission to cut	4–023b
Notice of application, for posting on land	4–023c
Notice of intention to cut for free use	4–023f
Timber, export, sale contract.[4a]	
Town lot, in railroad town site:	
Of less than 2 acres, application for	4–013
Of 2 acres or more, application for	4–015
Memorandum certificate	4–013a
Memorandum receipt	4–013b

FUR-FARMING LEASES[5]

The following rules and regulations will govern the issuance of fur-farming leases under the act of July 3, 1926 (44 Stat. 821):

APPLICATION FOR LEASE

1. Applications for leases, addressed to the Commissioner of the General Land Office, should be filed in duplicate in the proper district land office. After assignment of a serial number and due notation thereof, one copy should be forwarded to the General Land Office and the other to the division inspector at Anchorage, Alaska. A status report should be furnished with each. No specific form of application is required, and no blanks will be furnished therefor.

[4a] This form was printed as part of Circular No. 1092. See footnote, p. 262.

[5] The instructions under this heading are based on Circular No. 1108, not carried in this publication. The forms contained in Circular No. 1108 have not been reproduced herein. See instructions of Jan. 30, 1928, p. 190, and of March 19, 1929, p. 278.

Applications should cover, in substance, the following points, and be under oath:

(*a*)[6] Applicant's name and post-office address.

(*b*) Proof of citizenship of applicant; if an association of individuals, proof of citizenship of each member thereof; and if a corporation, a certified copy of the articles of incorporation must be furnished.

(*c*) Description of the land for which the lease is desired, by legal subdivision if surveyed, and by metes and bounds if unsurveyed. In order to properly identify unsurveyed lands, if practicable, the metes and bounds description should be connected by course and distance with some corner of the public-land surveys and their position with reference to rivers, creeks, mountains or mountain peaks, towns, islands, or other prominent topographical points or natural objects or monuments should be given.

(*d*) The approximate acreage if the application is for unsurveyed land.

(*e*) Two references as to applicant's reputation and business standing.

(*f*) The kind or kinds of fur-bearing animals to be raised, and, if foxes, whether silver, blue, or white.

(*g*) The number of fur-bearing animals the applicant expects to have on the leased land within one year from the date of the lease.

(*h*) A showing that the applicant has a permit to take animals with which to stock the leased land.

(*i*) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others; and if so, the nature of the use and occupancy.

PREFERENCE RIGHT

2. Anyone who in good faith is occupying an island or other tract of land for the purpose of raising fur-bearing animals, and who was unable to obtain a permit or lease because of lack of legal authority, shall have a preferred right to file an application for a lease at any time within six months from the date of these regulations. An applicant claiming such preference right must state fully the facts upon which this claim is based.

BEAVER RAISING

3. No lease under this act for the purpose of raising beavers shall be granted on any area already occupied by a beaver colony and no such lease shall be granted on streams or lakes which will interfere with the spawning grounds of salmon.

INVESTIGATION

4. When the copy of the application is received by the division inspector he will cause an investigation to be made and report fully to the Commissioner of the General Land Office as to the improvements, if any, existing on the lands; as to their use and occupancy, and as to the feasibility of granting the lease.

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[6] See amendment, p. 278.

NEWS ITEM

5. Upon the issuance of a lease under this act the register of the United States district land office for the district within which the leased land is situated will furnish the newspaper nearest said land a statement of the issuance of the lease, containing the name of the lessee and a description of the leased land, such statement to be published as an item of news.

RENTAL

6. Every lessee under this act shall pay to the lessor in advance a minimum rental of $25 per annum on leases for all tracts up to and including 640 acres and a minimum of $50 annual rental on leases of tracts exceeding 640 acres, and shall pay a maximum rental equal to a royalty of 1 per cent on the gross returns derived from the sale of live animals and pelts, if the amount thereof exceeds the minimum rental mentioned, such yearly rental to be credited against the royalties as they accrue for that year.

CANCELLATION OF LEASE

7. A lease under this act will be subject to cancellation by the Secretary of the Interior for failure of the lessee to comply with any of the conditions enumerated therein or to exercise due diligence in raising the kind or kinds of fur-bearing animals specified in the lease or for the devotion of the leased area primarily to any purpose other than the raising of fur-bearing animals.

A lease will be automatically canceled for failure of the lessee to place on the leased area the number and kind of fur-bearing animals specified in the lease within a period of one year from the date of said lease as follows: When the lease embraces an area not exceeding 640 acres, not less than 2 pairs (two males and 2 females) of such animals shall be placed on the land within the year; 4 pairs on areas between 640 and 3,000 acres; and 6 pairs on areas exceeding 3,000 acres.

FORM OF LEASE

8. Leases under this act will be made on Form 4–230.

Grazing Leases[g]

The leasing of lands in Alaska under the act of March 4, 1927 (44 Stat. 1452), for grazing livestock, will be governed by the following regulations:

GRAZING DISTRICTS

1. The Secretary of the Interior is authorized, on application or otherwise, to create grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, national forests, and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease the grazing privileges therein.

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[g] **The instructions under this heading are based on Circular No. 1138, not carried in this publication. The forms contained in Circular No. 1138 have not been reproduced herein. Sections 3 and 4 of the instructions have been amended by Circular No. 1203, p. 284.**

(*a*) Leases will not be granted for areas which embrace the natural grazing grounds or routes of migration of wild animals, such as caribou and moose, it being the policy to retain such areas intact for the benefit of wild life and for the natives to subsist thereon, and to prevent the interbreeding of reindeer with wild animals.

(*b*) Any grazing district may be enlarged or diminished, for any sufficient reason, subject to existing rights of any lessee.

2. Notice of intention to establish a grazing district will be published once a week for six consecutive weeks in a newspaper of general circulation in the judicial division in which the proposed district is to be established. The notice will describe the boundaries of the proposed district and give the date on which the district will be established. On or prior to the date announced in the published notice, any person may file objections to the proposed action.

APPLICATIONS

3.[7] After the establishment of a grazing district, applications for leasing the same may be filed, in triplicate, in the proper district land office.

(*a*) Applications for leases for reindeer grazing areas by natives or associations of natives may be filed through a district superintendent of schools, a supervisor of reindeer, or other responsible official of the Bureau of Education.

(*b*) After a serial number has been assigned by the register to an application for lease, one copy will be forwarded to the Commissioner of the General Land Office and one to the division inspector at Anchorage, Alaska, each copy to be accompanied by a status report. If the application is for reindeer grazing, a copy should be filed in the office of the district superintendent.

(*c*) Applications for leases must conform substantially to Form 4–469.

4.[8] When a copy of an application for lease is received by the division inspector, he will cause an investigation to be made, except where such investigation has already been made by a representative of the Bureau of Education, and report to the Commissioner of the General Land Office as to the livestock to be grazed on the land; as to the improvements, if any, existing thereon; as to their use and occupancy, and as to the feasibility of granting a lease.

(*a*) Every application for the leasing of a reindeer grazing area, when transmitted by the register of the district land office to the division inspector, will be accompanied by a report or concurrence in a prior report, in duplicate, by an official of the Bureau of Education designated by the Commissioner of Education.

CONDITIONS

5. The Secretary of the Interior may temporarily close portions of a leased area to grazing whenever, because of incorrect handling of the stock, overgrazing, fire, or other cause such action is necessary to restore the range to its normal condition. This temporary closing will not operate to exclude such lands from the boundaries of a lease.

6. The Secretary may prescribe the maximum number of stock which may be grazed on a particular area, this maximum number to

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[7] See amendment, p. 284.

[8] See amendment, p. 284.

be fixed on the condition of the range and its accessibility to summer and winter feeding, with the right to reduce the maximum number of stock grazed whenever permanent damage to the range is liable to result, and to increase the number whenever it is possible to do so without injury to the range.

7. The Secretary may reduce the leased area if it is excessive for the number of stock owned by the lessee.

8. The Secretary may exclude stock from a specified area whenever it is determined that such area is required for the protection of camping places, sources furnishing drinking water to communities, roads and trails, town sites, mining claims, and for feeding grounds near villages for the use of draft animals or near the slaughtering or shipping points for use of stock to be marketed, and for reasonable native berrying grounds.

DEFINITIONS

9. "Natives," as mentioned in section 6 of the act, is defined as meaning members of the aboriginal races inhabiting Alaska, of whole or mixed blood.

(*a*) "Other occupants of the range" is defined as meaning persons occupying the range on March 4, 1927, and the area regarded as occupied by this class will be limited in the case of homesteaders or other claimants under public land laws to the area actually used or occupied on that date.

(*b*) "Settlers" will be regarded as those persons who have established and maintained a bona fide residence within or adjacent to a grazing district either before or after March 4, 1927.

PREFERENCE

10. Preference will not be granted according to the classes listed under section 6 of the act where to do so would oust others who have been grazing the land applied for if it is determined that such other persons should be protected.

11. Any person claiming a preference right to a lease must fully state the facts, by affidavit duly corroborated, on which such claim is made.

CORPORATIONS

12. If an application for a lease is filed in the name of a corporation, the applicant must be prepared to furnish such evidence of the creation of the corporation as the Secretary may require.

DESCRIPTION OF LANDS

13. If the land for which a lease is desired is surveyed, it must be described by legal subdivision. If the land is unsurveyed, it may be shown by a map drawn to appropriate scale, showing the land in relation to rivers, creeks, mountains, mountain peaks, towns, islands, or other prominent topographic features or natural objects, with the approximate latitude and longitude of at least one point on the boundary.

14. Leases will be granted for grazing on a definite area, except where local conditions or the administration of the grazing privileges

makes more practicable a lease based on the number of stock to be grazed.

PAYMENTS

15. Unless otherwise provided, each lessee shall pay to the proper district land office such annual rental, per head or per acre, as may be determined is a fair compensation to be charged for the grazing of livestock on the leased land, the compensation to be fixed with due regard to the general economic value of the grazing privilege. The date for making the annual payment will be specified in the lease.

(*a*) If the rental is to be paid according to the number of animals grazed, no charge will be made for animals under one year of age at the time of entering on the leased area, provided they are the natural increase of the stock upon which fees are paid.

ASSIGNMENTS

16. Proposed assignments, in whole or in part, of a lease must be submitted to the Secretary for approval, and must be accompanied by the same showing as is required of applicants for a lease.

DRIVEWAYS

17. When it appears necessary for stock to regularly cross any portion of an established grazing district, and undue injury to other interests will not result, suitable driveways may be established. Such driveways will be as short and as easy of passage and access as the character of the country and the protection of other interests will permit. They will be established with care for the interests of lessees using adjoining ranges. Where driveways are reserved along well-defined routes which must be traveled, all grazing on these areas will be prohibited except by stock in transit.

QUARANTINE REGULATIONS

(*a*) It is absolutely essential that persons driving or transporting stock from one point to another comply with the quarantine regulations prescribed by the Territorial or other proper authorities, and unless they do so the privilege may be denied them. The condition of the stock as to contagious or infectious diseases will be determined by the proper Federal or Territorial authorities.

CROSSING PERMITS

18. Crossing permits will ordinarily not be required when the period for crossing is short, when the stock will be driven along a public highway and will not be grazed upon the leased land, or when such crossing will not interfere with the grazing district administration or other related interests.

(*a*) Free crossing permits will be issued by the division inspector when good grazing administration or the protection of other related interests do not make the issuance of such permits objectionable. Applicants for crossing privileges must make their applications to the division inspector, or such other officer as he may designate, sufficiently in advance of the date when such privilege is to begin to enable the proper officer to handle the details of the business and to give such sufficient notice of the proposed drive to the lessee that he will be able to remove his animals from the line of the drive if he so desires. The application must show the number of stock to be driven, the date of starting, and the approximate period required for crossing.

(*b*) Applications for crossing permits may be made either in person or by letter, and permits may be issued to either the owner or persons in charge of the stock.

(*c*) If the land to be crossed is uninclosed and the lessee does not desire to waive the right to its exclusive use, the stock must be so handled that the animals will not intrude upon the adjoining grazing areas.

(*d*) If a shipping point within a grazing district is the only one reasonably accessible to persons grazing stock outside that grazing district, crossing privileges may be allowed under such restrictions as are necessary to protect the interests of the lessee.

FREE GRAZING

19. Any person, including prospectors and miners, may graze, free of charge, not more than 10 animals upon any land included within any grazing district upon applying to the division inspector, in person or by letter, stating the number and kind of stock to be thus grazed and the approximate time such grazing will be continued.

NATIVES OR HALF-BREEDS

20. Any Eskimo or other native or half-breed, or association thereof, may apply for a grazing allotment on unallotted public lands, and the same lease shall be issued to him or them as to other persons, except that no annual rental will be charged for such lease. Such applicant must show by a corroborated statement that the applicant is an Eskimo or other native or half-breed, or an association thereof, and entitled to such lease without charge.

21. When such Eskimo, native, or half-breed grazes his livestock, through cooperative agreement, on an allotment held by other lessees or permittees, any grazing fee charged for said land on the basis of acreage will be reduced in proportion to the relative number of such native-owned livestock to the total number on said allotment.

ADVISORY BOARDS

22. Whenever any livestock association, whose membership includes a majority of the lessees or permittees owning any class of livestock using a range district unit or allotment, shall select a committee, an agreement on the part of which shall be binding on the association, such committee, upon application to the Secretary, may be recognized as an advisory board for the association. Such advisory board shall then be entitled to receive notice of proposed action and have an opportunity to be heard by the local representative of the Secretary in reference to increase or decrease in the number of stock to be allowed for any year, the division of the range between owners, or the adoption of rules to meet local conditions.

(*a*) When an association represents only a minority of the lessees or permittees owning any class of livestock, but its members own 75 per cent of that class of livestock using the range, its advisory board may be recognized upon petition of a sufficient number of other owners to constitute a majority of all the grazing lessees or permittees affected.

(*b*) Upon request from, and with the approval of, an officially recognized advisory board the Secretary may adopt special rules to regulate the use and occupancy of the range and to prevent damage to the range areas, under rules to be binding upon and observed by all lessees or permittees grazing stock within the range involved. Such conditions as may be necessary may be imposed upon the handling of permitted stock, the employment of herders to confine the stock to the allotted ranges, the distribution of salt, the enforcement of Territorial livestock laws, and the construction of permanent improvements to protect the range or faciliate the handling of stock.

OTHER CONDITIONS

23. All conditions contained in the prescribed form (4–470) of lease, but not otherwise mentioned in these regulations, will be considered as a part hereof.

HOMESTEADS

1. All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

SETTLEMENT ON UNSURVEYED LAND

2. A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly extended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

NOTICE OF SETTLEMENT

3. In addition to marking the claim by permanent monuments at each corner, the settler, in order to protect his claim, must post a notice of the location on the land and must, within 90 days after the settlement, file a copy of the notice for record with the commissioner of the recording district in which the land is situated. The location notice should contain the name of the settler, the date of the settlement, and such description of the land claimed by reference to some natural object or permanent monument as will serve to identify it.

SETTLEMENT ON SURVEYED LANDS

4. Settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section; but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter, he should define his claim by placing some improvements on each of the smallest subdivisions claimed. As to such claims no posting or recording of a location notice is required, but an application for entry must be filed at the United States land office within three months after the date of settlement in order to preserve the preference right of entry as against subsequent settlers.

PRESCRIBED FORM OF APPLICATION

5. Application to make homestead entry for lands in Alaska should be presented on Form 4–007, the form prescribed for homestead entries under section 2289, United States Revised Statutes.

AFFIDAVITS WHICH SHOULD ACCOMPANY APPLICATION ON PRESCRIBED FORM

6. Each application on the prescribed form should be accompanied by a corroborated affidavit showing:

(1) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that the land is not within a distance of 80 rods along any such water from any location theretofore made with soldiers' additional rights or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration is filed, as permitted in paragraph 2, under the heading "Shore Space Restrictions and Reservations."[9]

(2) That the land is not within an area which is reserved because of springs or water holes thereon. All facts relative to medicinal or other springs or water holes must be stated as set forth in paragraph 3 under the heading "Springs and Water Holes."[10]

OFFICERS AUTHORIZED TO ADMINISTER OATHS IN HOMESTEAD CASES IN ALASKA

7. An application to enter lands in Alaska may be sworn to before the register or the receiver or the acting register of the district in

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[9] See p. 246.

[10] See p. 253.

which the land lies or before any court, judge, or other officer in Alaska, or in the United States outside of Alaska, authorized by law to administer an oath. Except as to officers of the district land office, the official character of any officer not using a seal must be certified to under seal by the clerk of the court having record of his appointment and qualifications.

DESCRIPTION OF LANDS IN APPLICATION

8. A homestead application must describe the lands desired according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

AREA SUBJECT TO APPROPRIATION

9. A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

LIMITATION OF ACREAGE

10. The act of August 30, 1890 (26 Stat. 391), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

QUALIFICATIONS REQUIRED

11. Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, United States Revised Statutes, is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that Territory for not exceeding 160 acres.

SECOND ENTRIES

12. No showing is required of an applicant for 160 acres in the Territory as to a former homestead entry outside of the Territory, but if the applicant has made homestead entry or filed a location notice of a settlement in the Territory and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the Territory, make the showing required by the act of September 5, 1914 (38 Stat. 712), explained in Circular No. 354 (43 L. D. 408).

ADDITIONAL ENTRIES

13. Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854), for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in Circular No. 541. An additional entry under the act of April 28, 1904, is not subject to commutation.

APPLICABLE LAWS

14. All homestead claims in Alaska must be perfected under and in accordance with the provisions of the three-year homestead law of June 6, 1912 (37 Stat. 123), and regulations thereunder, contained in Circular No. 541, except claims initiated prior to its passage, which may be perfected under either the three-year or the five-year law.

ESTABLISHMENT OF RESIDENCE

15. Residence must be established upon the claim within six months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than six months may be allowed, upon application duly filed, in which the entryman shows by his own affidavit, and that of two witnesses, that residence could not be established within the first six months, for climatic reasons, or on account of sickness, or other unavoidable cause.

LEAVE OF ABSENCE

16. A leave of absence for one year or less may be granted by the district officers to a homesteader who has established actual residence on the land, where failure or destruction of crops, sickness, or other unavoidable casualty has prevented him from supporting himself and those dependent upon him by cultivation of the land.

RESIDENCE AND CULTIVATION REQUIRED—PERMISSIBLE ABSENCES

17. A homestead entryman must show residence upon his claim for at least three years; however, he is entitled to absent himself during each year for not more than two periods making up an aggregate of five months, giving written notice to the district land office of the time of leaving the homestead and returning thereto.

There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application duly filed. The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

TRANSFERS BEFORE PROOF

18. In Alaska, as in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the Territory transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

COMMUTATION OF ENTRIES

19. To the extent of not more than 160 acres an entry may be "commuted"; that is, the claimant may show 14 months' residence upon the land and cultivation of one-sixteenth of the area commuted and pay $1.25 per acre therefor, cash certificate thereupon issuing, followed by patent in the usual manner. In such cases, the homesteader is entitled to a five months' absence in each year, but can not have credit as residence for such period, actual presence on the land for 14 months being required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233), is not subject to commutation.

SURVEY WITHOUT EXPENSE TO SETTLER

20. The land included in a settlement claim may be surveyed without expense to the settler provided he has sufficiently complied with the law in the matter of residence, cultivation, and improvements to submit three-year proof.

Petition for survey should be filed in duplicate in the proper district land office, describing the land settled upon by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the 160-rod inhibition has been waived; also that the land is not within a distance of 80 rods along any navigable water from any location theretofore made with soldiers' additional or lieu selection rights, or as a trade and manufacturing site, homestead or Indian allotment, or that the land has been restored from reservation. The petition should be sworn to by the applicant and it should be corroborated by the affidavits of two persons having knowledge of the facts.

The register and receiver will assign a current serial number to the petition and will transmit the original copy thereof to the General Land Office, and if they find the showing satisfactory, if no shore-space question is involved, and in the absence of other objection they will send the duplicate copy of the petition to the cadastral engineer in charge of the public survey office, who, not later than the next succeeding surveying season will issue instructions for the survey of the land without expense to the applicant.

If deemed advisable the cadastral engineer in charge will direct the survey of the land under the rectangular system instead of the survey of the particular claim by metes and bounds.

If a shore space question is involved, the request for survey should be accompanied by a petition, in duplicate, for the waiver of the restriction as to length of claim or for the restoration of the land from reservation, or both.[11] In such case the register and receiver will send the original of both petitions to the General Land Office and the duplicate of both petitions to the division inspector. The latter will report whether or not there is objection to the waiver or restoration requested or to the making of the survey. The report will be made to the General Land Office, as in other cases, but the division inspector will send a copy of the report to the public survey office at Juneau, Alaska, together with the duplicate of the petition for survey and of the petition for waiver or restoration. If a favorable report is made the survey may be proceeded with in the public survey office in like manner as though the land had been restored; but the survey will not be accepted by the General Land Office and an application to enter based thereon will not be entertained unless and until the land is actually restored. In the case of an unfavorable report by the division inspector, action on the petition for survey will be suspended until final action has been had on the petition for restoration.

SURVEY AT EXPENSE OF SETTLER

21. A settler who wishes to secure earlier action in the matter of survey, or one who wishes to submit commutation proof, may have a survey made at his own expense by a deputy surveyor appointed by the United States supervisor of surveys.

APPLICATION TO ENTER LAND INCLUDED IN SPECIAL SURVEY

22. After a special survey has been made, application to enter should be made as in the case of other settlements on surveyed lands.

SUBMISSION OF PROOF

23. Proof may be submitted without previous notice of intention by publication, but it should not be submitted in advance of a special survey.

Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the register and receiver of the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases[12] and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the district land office.

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[11] See p. 246.

[12] See p. 209, par. 7.

FEES AND COMMISSIONS

24. The same payments as fees and commissions are required in connection with homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in Circular No. 541.

PUBLICATION AND POSTING

25.[13] The register and receiver, upon receipt of the application to enter and the proof testimony, will carefully examine same, and if they find same satisfactory and if the required payments have been made, they will allow the application and will issue and transmit to the entryman notice for publication reading as follows:

> Final proof testimony on homestead entry —— embracing ——— has been submitted by ——— ———, entryman, and his witnesses, ——— ———, residing at ———, and ——— ———, residing at ———, and is now in the files of the district land office at ———, Alaska, and if no protest is filed in the district land office at ——— on or before ———, said final proof will be accepted and final certificate issued.

The register will send a copy of the proof notice to the division inspector for report.

Where a special survey has been made, the proof notice must give the survey number and also the metes and bounds description of the land, and it must be published at the expense of the applicant for a period of 60 days in a newspaper designated by the register as being one of general circulation nearest the land. If the paper be published daily, there must be 60 insertions of the notice; if daily except Sunday, 52 insertions; if semiweekly, 18 insertions; and if weekly, 9 insertions. Moreover, for 60 consecutive days during the period of publication the entryman must keep a copy of the plat,[14] and of his notice of having made proof, posted in a conspicuous place on the land.

Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, publication of notice will be required for a period of 30 days only. If this be in a daily paper, the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if semiweekly, in 9; and, if weekly, in 5 consecutive issues. No posting on the land will be required.[h]

The register must cause a copy of the notice to be posted in his office during the entire period of publication.

ADVERSE CLAIM

26. In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in, or claim to, the tract of land or any part thereof sought to be purchased, may file in the land office where the application is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the

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[13] See amendment, p. 277.

[14] See p. 255, par. 9(e).

[h] See instructions of Oct. 19, 1929, p. 1149.

filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

Where such adverse claim is filed action on the application will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the register and receiver in accordance with the Rules of Practice (51 L. D 547).[15]

PROOF OF PUBLICATION AND POSTING

27. The proof of publication must consist of the affidavit of the publisher or foreman of the designated newspaper, or some other employee authorized to act for the publisher, that the notice (a copy of which must be attached to the affidavit) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper and not in a supplement. Proof of posting on the claim must consist of the affidavits of the applicant and one witness who of their own knowledge know that the plat of survey and proof notice were posted as required and remained so posted during the required period. The register must certify to the posting of the notice in a conspicuous place in his office during the period of publication.

ISSUANCE OF CERTIFICATE

28. Upon the expiration of the period allowed for the filing of adverse claims, if all necessary proofs and payments have been made, and in the absence of objection then appearing, the register will issue final or cash certificate as may be proper.

National Forest Homesteads

The act of June 11, 1906 (34 Stat. 233), providing for homestead entries of agricultural lands within national forests applies to such lands in Alaska. Circular No. 263 (49 L. D. 9) has been issued under this act.

National-forest entries may be made only after the lands desired have been listed by the Secretary of Agriculture as agricultural in character and after a declaration by the Secretary of the Interior that the listed lands are subject to settlement and entry.

Information as to the boundaries of the forests, the method of applying for listing, etc., may be obtained by addressing the Forester, Washington, D. C., or the United States district forester at Juneau, Alaska.

Homestead entries in national forests are limited in area to 160 acres and are subject to the general homestead laws and regulations, except that no commutation is allowed. Application should be made on Form 4–007, as in other cases.

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[15] See p. 199.

In the matter of form of entry and direction of boundaries, homestead settlements and entries in national forests in Alaska are subject to the same conditions and provisions as are applicable to other homestead claims in Alaska;[16] otherwise, the regulations governing the survey of homestead entries in national forests, contained in Circular No. 235 (42 L. D. 124), are applicable.

No showing as to shore space,[17] or as to springs or water holes,[18] is required in connection with homestead entries in national forests in Alaska.

HOMESTEADS ON COAL, OIL, AND GAS LANDS

Provision for homestead entries on coal, oil, and gas lands in the Territory of Alaska, with a reservation of the mineral deposits, was made by the act of March 8, 1922 (42 Stat. 415), and entries thereunder will be governed by the following instructions:

SCOPE OF ACT

1. The act provides that upon the unreserved, unwithdrawn public lands in the Territory of Alaska homestead claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits, or which may be, in fact, valuable for the coal, oil, or gas contained therein. Thus, by the class last named, provision is made for cases in which land is not at the date of the initiation of the claim thereto actually known to contain workable coal, oil, or gas deposits, but in which it becomes known, during the interval between the initiation of the claim and its completion, that the land is, in fact, valuable for the coal, oil, or gas contained therein.

It also provides that homestead claims so initiated may be perfected under the appropriate public land laws and that, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same.

The act constitutes, therefore, an extension to the Territory of Alaska of the principles of the surface homestead acts already in force in the public-land States, namely, the acts of March 3, 1909 (35 Stat. 844), June 22, 1910 (36 Stat. 583), and July 17, 1914 (38 Stat. 509).

HOMESTEAD APPLICATIONS

2. Applications to make homestead entry for land embraced in a coal, oil, or gas prospecting permit or coal lease should be suspended and forwarded to the General Land Office for consideration and instructions, but if for lands embraced in an oil or gas lease, should be rejected, subject to appeal.

Applications to make homestead entry for land classified as or known to be valuable for coal, oil, or gas must have written, stamped, or printed upon their face the following:

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[16] See p. 208, par. 2. [17] See p. 244. [18] See p. 252.

Application made in accordance with and subject to the provisions and reservations of the act of March 8, 1922 (42 Stat. 415).

Like notations will be made by registers upon the face of the notices of allowance issued on applications filed under this act. If, prior to the date of the filing of the homestead application, the land was embraced in a prospecting permit or coal lease, the notice of allowance should contain substantially the following:

The records of this office show that (*here insert the name of permittee or coal lessee*) has been granted a prospecting permit (*or coal lease, as the case may be*) affecting the (*here insert description of land*), and has the right to occupy so much of the surface thereof as may be required for all purposes reasonably incident to prospecting for and the removal of the coal (*or drilling for and the extraction of the oil and gas, as the case may be*), without liability to the homstead entryman for resulting damages to his crops and improvements.

FINAL CERTIFICATES AND PATENTS

3. Final certificates issued to homestead claimants under this act will contain the following provision, which the register will cause to be written or stamped thereon:

Patent will contain provisions, reservations, conditions, and limitations of the act of March 8, 1922 (42 Stat. 415).

There will be incorporated in patents issued to homestead claimants under this act the following:

Excepting and reserving, however, to the United States all the (deposit on account of which the lands are withdrawn, classified, or reported to be valuable—coal or oil and gas, as the case may be) in the lands so patented, and to it or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of March 8, 1922 (42 Stat. 415).

NOTATIONS OF RECORDS

4. Upon the acceptance by you of any filing under this act, you will make appropriate notation on your records to show that the filing was made under the provisions of the act. You will make a similar notation on the margin of the township plat, if any, giving the description of the land in which the deposits have been reserved.

SOLDIERS' ADDITIONAL HOMESTEADS

5. The final proviso to the act excludes all the lands in Alaska withdrawn, classified, or valuable for coal, oil, or gas, from entry or disposition by means of the location of rights under section 2306, Revised Statutes, commonly known as soldiers' additional homestead entries.

DISPOSAL OF MINERAL DEPOSITS

6. Section 2 of the act provides that, upon satisfactory proof of full compliance with the provisions of the laws under which entry was made and with the provisions of the act itself, the homestead claimant shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal, oil, and gas in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal, oil, and gas deposits so reserved shall be subject to disposal by the

United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal. It also provides that any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas, under the laws of the United States shall have the right at all times to enter upon the lands as provided by this act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all the damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States coal, oil, or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages,

There is no provision under the law for prospecting prior to the actual issuance of a permit therefor.

PERMITTEES' BONDS

7. Provision is made by the act of March 4, 1921 (41 Stat. 1363), for coal prospecting permits in Alaska, and by the act of February 25, 1920 (41 Stat. 437), for oil prospecting permits. In order lawfully to mine, remove, or drill for the coal, oil, or gas affected by this act, the permittee must file a waiver from, or a consent of the homestead claimant, or there must be presented to and be approved by the Secretary of the Interior a bond or undertaking for the payment of all damages to the crops and improvements on the lands prospected caused by the prospecting.

FORM OF PERMITTEE'S BOND

8. There must be filed with such bond or undertaking evidence of service of a copy thereof upon the homestead claimant. The bond must be executed by the prospector as principal with two competent individual sureties, or a corporate surety which has complied with the provisions of the act of August 13, 1894 (28 Stat. 279), as amended by the act of March 23, 1910 (36 Stat. 241), in the sum of $1,000. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a postmaster as to the identity, signatures, and financial competency of the sureties.

This bond or undertaking may be filed as a matter of expedition at the time of the filing by the mineral claimant of his application for a permit or the filing may be deferred until formal notice of the necessity therefor shall be received from the General Land Office. For forms of bonds which should be utilized see 50 L. D. 129 to 131, inclusive.

LESSEES' BONDS

9. There is no provision for the presentation to this office of bonds executed to or for homestead claimants by lessees or by persons who have acquired from the United States coal, oil, or gas deposits or the right to mine, drill for, or remove the same. In such cases bonds are to be arranged for in an action instituted in any competent court to ascertain and fix the damages suffered.

HOMESTEAD CLAIMANT'S LIMITED RIGHT TO MAKE USE OF THE COAL DEPOSITS

10. The homestead claimant under this act may, at any time prior to the disposal by the United States of the coal deposits on his claim, make use of them for his domestic purposes and this may be done without the filing of any application therefor. This privilege does not, however, authorize the mining of the coal deposits for the purpose of barter or sale.

Allotments to Indians and Eskimos

1. The proceeding to secure an allotment under the act of May 17, 1906 (34 Stat. 197), will be initiated by a written application to the register and receiver, signed by the applicant and describing the location and extent of the tract applied for, and, if unsurveyed, by as accurate a description as possible by metes and bounds, and natural objects, and its position with reference to rivers, creeks, mountains or mountain peaks, towns, or other prominent topographical points of natural objects or monuments, giving the distances and directions as accurately as possible, especially with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing on the map of Alaska. Notice of the application should be posted upon the land, describing the tract applied for, in the terms employed in the application, and a copy of such notice should accompany the application. If the applicant is unable to write his name, it is desired that his thumb print to the application be obtained, in preference to his signature by mark, his thumb print to be witnessed by two persons. Allotments will not be made on tracts reserved by the United States as shore spaces under the act of March 3, 1903 (32 Stat. 1028),[19] or within national forests, unless founded on actual occupancy prior to the establishment of the forest, or unless the Secretary of Agriculture certifies that the application is allowable under section 31 of the act of June 25, 1910 (36 Stat. 855, 863), and provided the applicant shows occupancy, residence, or improvements required by said section. The application if filed under said section 31 should be made on form 5-149, and should contain a reference to the act of May 17, 1906.

Reserved shore spaces eliminated under the provisions of the act of June 5, 1920 (41 Stat. 1059), may, in the discretion of the Secretary of the Interior, be allotted under the terms of said act of May 17, 1906, and these regulations, and the terms and provisions of said act of June 5, 1920, and instructions thereunder.

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[19] See p. 244.

AFFIDAVITS

2. The applicant must also file his or her affidavit of qualification under the statute, and if claiming under the preference-right clause, the date of the beginning of his occupancy must be given, and its continuous nature stated. This must be corroborated by an affidavit of two witnesses, who may be Indians or Eskimos.

3. A nonmineral affidavit must also be filed by the applicant, sworn to only on personal knowledge and not on information and belief.

4. The affidavits may be sworn to before the proper register or receiver, or any officer authorized to administer oaths and having a seal.

MARRIED WOMAN

5. If the application is made by a woman, she must state in her affidavit whether she is single or married, and if married must show what constitutes her the head of a family, as it is only in exceptional cases that a married woman is entitled to an allotment under this act.

ACTION ON APPLICATION

6. The register and receiver will receive and suspend applications for allotments filed under this act, number such applications in accordance with the circular of August 9, 1918 (46 L. D. 513), and note the same on the schedules forwarded at the end of the month, as required by said circular, giving in the "Remarks" column the date of transmittal to the division inspector. Where the application is found by the district land officers to be complete in all respects, as hereinbefore required, is not rejected by them for any reason, and is received, noted, and suspended by them to await completion of the hereinafter-mentioned proceedings, it operates as a segregation of the land. All claims for land presented to the register and receiver subsequent to the filing of such an application which conflict in whole or in part with such application for the land therein described shall be rejected.

PAPERS—FEES

7. The register and receiver will assist applicants in the preparation of their papers, as far as practicable, and, as the act makes no provision for any fees for filing, will make no charge in any of these cases.

REFERENCE TO DIVISION INSPECTOR

8. The application for allotment and all papers filed in connection therewith will, when such application is found satisfactory to the register and receiver, be referred by them to the division inspector.

REPORT FROM DISTRICT SUPERINTENDENT, BUREAU OF EDUCATION

9. Upon receipt of the record from the district land office, the division inspector will call on the district superintendent of the United States Bureau of Education for the district in which the proposed allotment is situated for a report covering such information as he may have in regard to the allotment, and particularly covering the following points:

(*a*) The location of the land, if necessary, to furnish a more accurate description than given in the application.

(*b*) The special value of the tract, either for agricultural uses or fishing grounds.

(*c*) What, if any, residence has been maintained on the tract by the applicant.

(*d*) The value and character of all improvements thereon.

(*e*) The fitness of the land as a permanent home for the allottee.

(*f*) The competency of the applicant to manage his own affairs.

(*g*) The presence or absence of any adverse claims and, if any such claims exist, a description thereof.

(*h*) The proximity of the claim applied for to other claims under said act of May 17, 1906.

(*i*) Such other information as may serve to aid in determining whether the application should be allowed, either in whole or in part, together with his recommendation as to the proper action in the premises.

APPLICATION FOR SURVEYED LAND TO BE ALLOWED

10. Upon receipt of favorable reports from the division inspector and district superintendent covering allotment applications hereafter filed, embracing lands covered by the public survey, the register and receiver may, all else being regular, and no valid objections thereto being apparent, allow the same, notice of which, by special letter, reading substantially as follows:

> Your application under the act of May 17, 1906 (34 Stat. 197), No. ———, for ——————————, has been placed of record in this office and forwarded to the General Land Office.
>
> This action segregates the land from the public domain, and no other application can be allowed therefor or settlement rights attach during the life of this application;

should be given to the applicant. Immediately upon the issuance of said notice copy thereof, appropriately marked, should be forwarded to each, the district superintendent, and the Commissioner of the General Land Office.

APPLICATION FOR UNSURVEYED LAND—LAND TO BE MARKED—LISTING DESCRIPTION TO BE FURNISHED BY INSPECTOR

11. Upon the receipt of the report of the district superintendent, in case of an application for unsurveyed land, the division inspector will, if in his judgment the report is sufficient, furnish or cause to be furnished by an inspector, as soon as may be convenient, and with as little expense to the Government as possible, and except in the matter of furnishing and installing the listing description monuments, without expense to the applicant, a listing description of the tract applied for. As basis for this listing description the land should be marked with substantial corners, properly installed and witnessed, uniformly marked and, except as provided for in paragraph 12 hereof, corner No. 1 thereof tied to the nearest location or mineral monument or corner of the public-land survey or other official patented survey if within a reasonable distance.

One of the aforesaid corners, preferably corner post No. 1, may be tied to the official survey of an approved allotment which has been properly tied to some established survey monument or corner of the public-land survey.

Except for the protection of preference rights acquired by actual occupancy, the land applied for must be taken by the applicant in rectangular form, and the lines must follow the true cardinal points as nearly as they may be determined, unless departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243),[20] and except in cases of preference rights acquired by actual occupancy, no application under said act will be favorably considered which embraces tracts of land situate upon both sides of a salmon stream or navigable or meanderable body of water. The land must be nonmineral in character, and no claim whatever may include in excess of 160 acres of such land.

12. Where the above referred to corner post is not tied to a corner of the public survey, but is tied to a location or mineral monument or one of the official surveys referred to in paragraph 11 hereof, the inspector's returns should contain a description of the location or mineral monument to which the corner, preferably corner No. 1, of the involved land is tied, by giving its latitude and longitude, and its position with reference to rivers, creeks, mountains or mountain peaks, towns, or other permanent topographical points or natural objects or monuments, giving the distances and directions as accurately as possible, especially with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing upon the map of Alaska, which description shall appear in the aforesaid returns.

Where the corner post, preferably No. 1, is tied to one of the official surveys mentioned in paragraph 11 hereof the location of such post corner with relation to the other monuments of the involved land and the relation of such post to the mineral monument to which the same is tied should be given, together with the other data enumerated in this paragraph concerning the description and position of the mineral monument.

The description of such monuments should be obtained from the public-survey office and appear in a paragraph of the returns separate from the description of the courses and distances herein authorized to be furnished by the inspector.

In case the land is situated beyond a reasonable distance from a corner of the public survey or location or mineral monument or other survey mentioned in paragraph 11 hereof the location of the land with reference to known rivers, creeks, mountains, towns, trails, mining camps, or other permanent topographic features or natural objects or permanent monuments may be and should be shown in the inspector's above-mentioned work and in his returns and be depicted on the map of the section of Alaska in which the allotment is situated, which should accompany his said returns.

FACTS TO BE REPORTED ON BY INSPECTOR—SKETCH REQUIRED

13. The inspector will, after the service aforesaid shall have been performed by him, make report thereof to the division inspector.

This report in sextuplicate should be typewritten, cover all the field work done as basis for the foregoing listing description, and contain such a description of the involved land and report of the work done in connection with obtaining the listing description as will enable the Government and all parties interested to ascertain readily the location of said land from said report, even though all visible marks or other physical evidence of the boundaries may have been entirely obliterated. The report should be accompanied by a sketch, signed and dated by the inspector depicting the boundaries of the land and the position of same with relation to well-known natural and other objects, the location and description of which should be fully and accurately stated in the inspector's returns.

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[20] See p. 208, par. 2.

The returns and sketch or diagram above referred to should each bear the same date of approval.

DISPOSITION OF COPIES OF INSPECTOR'S REPORT

14. Immediately upon receipt of the above report and diagram from the inspector the division inspector will, if he approves the same, transmit three copies thereof to the register and receiver within whose land district the premises are situated and one copy thereof to the public survey office.

NOTATION OF LISTING DESCRIPTION IN PUBLIC SURVEY OFFICE—OTHER PROCEEDINGS

15. The cadastral engineer in charge of the public survey office will upon receipt of the report and sketch note same in a book to be kept for such purpose and, where practicable, note the location of the land on the district sheets of his office in pencil until such time as an official survey thereof shall be ordered or final disposition is made of the allotment adverse to the applicant. Information concerning the status of the allotment application may be obtained by the public survey office from the proper district land officers. The division inspector is also directed in those cases where he approves the returns aforesaid made by the inspector to amend over his signature the allotment application to conform with the description of the land referred to in said returns as furnished by the inspector's report and forward said application thus amended and conformed to the General Land Office properly indorsed so as to show the changes in description therein and the date when made. The original report or returns made by the inspector should be forwarded by the division inspector to the General Land Office at the same time the allotment application amended and conformed as hereinbefore directed is forwarded. He will retain in his files the remaining carbon copy of said returns. The report of the district superintendent, approved by the division inspector in cases where the same meets with his approval, should also be transmitted to the General Land Office at the same time the amended application is forwarded as hereinbefore directed, together with such suggestions as to the application as may seem to him appropriate.

NOTATION OF LISTING DESCRIPTION IN DISTRICT LAND OFFICE

16. The register and receiver, as soon as they shall have received the aforesaid copies of diagrams and report from the division inspector will appropriately note their records so as to show the location, as shown by the listing description aforesaid, of the lands applied for.

APPLICATION FOR UNSURVEYED LAND WITH LISTING DESCRIPTION TO BE ALLOWED

17. Upon making the notations required by paragraph 16 hereof so as to further conform the application to the description thus furnished by the division inspector the register and receiver will relieve the application from suspension and place the same, as thus amended, of record, all else being regular, immediately reporting to the General Land Office by special letter their action in the premises and the date thereof. Notice of the above action of the district land officers should also be given, in writing, to the applicant and to the district superintendent of the United States Bureau of Education for the district in which the land thus applied for is situated, and each should be furnished with a copy of the returns or listing description, including diagram, furnished to the register and receiver by the division inspector as aforesaid. The copy of the inspector's report furnished the register and receiver by the division inspector should be retained by them until the application is finally disposed of, whereupon same should be forwarded by special letter to the General Land Office, with appropriate remarks.

EFFECT OF ALLOWANCE BY REGISTER AND RECEIVER

18. The removal of the suspension aforesaid, amendment of the application in the manner and particulars heretofore and hereinafter referred to, and placing of applications of record do not necessarily mean that the applications for allotment will be approved. The indicated action simply further segregates and continues to segregate the land from subsequent conflicting applications therefor until the Secretary of the Interior, in his discretion, decides either to approve or disapprove the application or applications for allotment.

ADJUSTMENT TO PUBLIC SURVEY

19. Except in cases of surveys already made and approved pursuant to prior regulations and authorizations, and which are free from objections, and also, except in special cases, where special instructions for the survey of the unsurveyed land applied for are issued, it shall be the duty of the register and receiver, upon the filing of the township plat in their office and upon ascertaining, where necessary, from the public survey office whether its records disclose any allotment applications within the township (and provided the allotment application still stands of record in their office), to notify the applicant and the said superintendent thereof, each by registered letter, and to require the adjustment of the claim to the public survey within 90 days.

In default of action by the parties notified, the register and receiver will promptly, and as accurately as the records will permit, adjust the claim to the public-land survey and report their action to the General Land Office.

The said adjustment shall embrace such subdivisions and parts of subdivisions as shall include all of the applicant's improvements and possessions, if possible.

APPROVAL OF APPLICATION ADJUSTED TO PUBLIC SURVEY

20. If the Commissioner of the General Land Office, upon the entire record submitted, shall find the application meritorious, in whole or in part, he will, not earlier than five years from and after the date when the said application shall have been adjusted to the public-land survey, unless otherwise directed, submit the same to the Secretary of the Interior for his approval. In special cases, however, and without being specially directed so to do, the Commissioner may, if upon the entire record submitted he shall find the application meritorious, in whole or in part, submit the same to the Secretary of the Interior for his approval as aforesaid; and if so approved, special instructions for the survey thereof will then issue in accordance with the terms of the approval. Where such special cases are taken up, considered, submitted, and approved, and special instructions for their survey are issued in accordance with the terms of the approval, such cases or allotments shall be subject to the same requirements as to methods of survey, cardinal courses, and permanent markings of boundaries, except for the protection of preference rights acquired by actual occupancy, as land surveyed under United States laws in Alaska in general, in accordance with the instructions governing lands thus surveyed.

APPROVAL OF APPLICATIONS MADE IN CONFORMITY WITH PUBLIC SURVEYS

21. Allotment applications embracing lands covered by the public survey and allowed by the district land officers will also not be submitted to the Secretary of the Interior for his approval earlier than five years from the date of their allowance by the register and receiver as aforesaid, and not then until the hereinbefore referred to reports shall have first been made to the Commissioner of the General Land Office.

RECORD OF APPROVED ALLOTMENTS—CERTIFICATE TO ALLOTTEE

22. A schedule of all approved allotments shall be kept of record in the General Land Office; and, as the act makes no provisions for a patent, a certificate will issue showing the approval of the allotment (and the survey thereof, if surveyed) for delivery to the allottee.

DISPOSITION OF REPORT OF DISTRICT SUPERINTENDENT, BUREAU OF EDUCATION

23. If the report hereinbefore mentioned of the district superintendent to the division inspector does not fully cover all the facts, the division inspector will either return it to the district superintendent for further information or direct an investigation by an inspector of his office, as in his judgment may be deemed best; and, moreover, whether he approves or disapproves the recommendations made in the report of the district superintendent, he will transmit same to the Commissioner of the General Land Office with such suggestions as to the application as may seem to him appropriate.

APPLICATIONS AFFECTED

24. These regulations apply to all Indian allotment applications filed on or after September 8, 1923, and to all such applications filed prior to that date, which on that date had not been officially surveyed or approved by the department and which were not then in condition to be recommended for approval.

RESERVATIONS FOR INDIANS AND ESKIMOS

While there is no specific statute relating to the subject, yet the inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes, to supervise the public business relating to the Indians includes the supervision over reservations in the Territory of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit. Opinion of the solicitor, May 18, 1923 (49 L. D. 592).

DISPOSAL OF LANDS

The tide or other lands in Alaska occupied or reserved for the Indians or natives can not be disposed of by them under existing law, but the power rests with Congress, with or without their consent, to provide for the ultimate disposal of these lands. Opinion of the solicitor, March 12, 1924 (50 L. D. 315).

LANDING AND WHARF PERMITS ON RESERVED SHORE SPACES

Section 10 of the act of May 14, 1898 (30 Stat. 409), the text of which is printed under the heading "Trade and Manufacturing Sites,"[21] authorizes the Secretary of the Interior to grant the use of reserved shore space lands abutting on the water front to any citizen, or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings and wharves, with the provision that the public shall have access to and proper use of such landings and wharves at reasonable rates of toll to be prescribed by the Secretary of the Interior.

APPLICATION

1. Applications for landing and wharf privileges must be under oath, and should be addressed to the Secretary of the Interior and filed in the proper district land office for transmission to the General Land Office by special letter.

Applications should describe the tracts desired by words and by a preliminary diagram showing their position in connection with adjoining surveys and water front and by courses and distances where not defined by prior surveys. There should be filed diagrams and specifications of the proposed wharves and landings, showing their position in connection with the roadway used by vessels, the width of the channel, and the various soundings. Maps and such other papers as may be necessary to fully show the situation must be furnished. All buildings proposed to be erected should be shown on the diagram accompanying the application, and there should be indicated their use and whether they are for public or private purposes.

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[21] The text of the section of the act referred to has not been included in this publication.

In an application by an individual or association, the citizenship of the individual and of the members of the association must be shown.

In case of a corporation a certified copy of the articles of incorporation and evidence of organization must be furnished in the same manner as is required where corporations apply for rights of way for railroad purposes.

USE OF LAND—TOLLS

2. The use of such land is limited to landings and wharves, and all rates of toll to be paid by the public must be submitted for approval of the Secretary of the Interior. The application should be accompanied by a proposed schedule of public toll charges; and if such charges are found to be reasonable, the schedule will be approved, subject, however, to revision as the public interests may thereafter require.

SURVEY—ISSUANCE OF PERMIT

3. If the application be allowed, the cadastral engineer in charge of the public survey office will instruct a United States surveyor to execute a survey and set permanent monuments to delineate the boundaries of the tract, and a permit will be issued granting the applicant the use of the land sought for landings and wharves, subject to the provisions and conditions prescribed by the statute, which permit will be revocable at the discretion of the Secretary of the Interior. The erection of wharves and piers in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside of established harbor lines, or where no harbor lines have been established, must be in conformity with plans recommended by the Chief of Engineers and authorized by the Secretary of War; consequently such applications will be submitted to the War Department for approval, or such other action as that department may deem proper, before final action is taken in this department.

JURISDICTION IN NATIONAL FORESTS

4. Reserved spaces between claims upon navigable waters within existing national forests in Alaska are subject to the jurisdiction of the Secretary of Agriculture, pursuant to the act of February 1, 1905 (33 Stat. 628), and permits for the use of such spaces for landings and wharves must be obtained through that department.

Public Land Laws Applicable in Alaska

The act of May 17, 1884 (23 Stat. 24), providing for a civil government for Alaska, in section 8, extended to Alaska "the laws of the United States relating to mining claims, and the rights incident thereto," but provided that "nothing contained in this act shall be construed to put in force in said district the general land laws of the United States." Similar provision is contained in sections 26 and 27 of the act of June 6, 1900 (31 Stat. 321), which also made provision for a civil government for Alaska.

However, in section 3 of the act of August 24, 1912 (37 Stat. 512), it was provided that " the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States."

In an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), the Attorney General had occasion to consider the effect of the act of August 24, 1912, in respect to extending certain public-land statutes to Alaska,[22] and, in this connection, he stated: " The express exception of the public land laws, found in the earlier organic acts, is here omitted; *all* the laws of the United States are to operate in Alaska save only such as may be locally inapplicable."

It follows, therefore, that whether or not any particular public land statute is applicable in the Territory depends on whether or not it may operate therein consistently with special legislation and with local conditions.

This publication contains the text of the principal public land statutes and the regulations thereunder, which relate exclusively to the Territory, and reference is made to other public land laws and regulations of a general character, which have been held applicable in the Territory.

The question whether any particular public land statute not referred to in this publication is or is not applicable in the Territory will be given consideration in each case as it arises.

Mineral Lands

1. The laws of the United States relating to mining claims were extended to Alaska by section 8 of the act of May 17, 1884 (23 Stat. 24), and sections 15, 16, and 26 of the act of June 6, 1900 (31 Stat. 321), again, in terms, extended the mining laws of the United States and all rights incident thereto, to the Territory, with certain further provisions with respect to the acquisition of claims thereunder. Instructions under the general mining laws are contained in Circular No. 430 (49 L. D. 15).

PLACER CLAIMS

2. The law in respect to placer claims in Alaska was modified and amended by the act of August 1, 1912 (37 Stat. 242), and section 4 of that act was amended by the act of March 3, 1925 (43 Stat. 1118).

The said act of August 1, 1912, applies exclusively to placer-mining claims located in Alaska on or after August 1, 1912. It does not in any manner relate to lode-mining claims, or placer-mining claims located prior to said date. The terms of the act lay strict limitations and conditions with respect to the placer locations made upon or after said date.

Section 1 of the act provides that no association placer claim shall be located after August 1, 1912, in excess of 40 acres. This limitation is positive, whatever may be the number of persons associated together or whatever the local district rules or regulations may permit.

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[22] See p. 241.

Said section further provides that on every placer-mining claim located in Alaska after the passage of the act, and until patent therefor has been issued, not less than $100 worth of labor must be performed or improvements made during each year, including the year of location, for each and every 20 acres or excess fraction thereof included in the claim. This means that the first annual expenditure on such a placer-mining location must be accomplished for and during the year in which the claim is located, instead of during the year succeeding that in which the location is made. Moreover, the amount of annual expenditure is dependent upon the size of the claim, it being required that at least $100 must be expended for each 20 acres or excess fraction thereof embraced in the location.

By section 2 it is provided that no person, as attorney or agent for another, may locate any placer-mining claim unless duly authorized by a power of attorney properly acknowledged and recorded in some recorder's office within the judicial division where the location is made. Furthermore, an authorized agent or attorney can act in making locations of placer-mining claims for only two individual principals or one associate principal during any calendar month, and during that period may not lawfully locate more than two claims for any one principal, either individual or association. No placer claim can lawfully be located except in compliance with and under the limitations of the act.

In order that the Land Department may be fully advised in the premises, the following requirements must be met with regard to applications for placer-mining claims located in Alaska on or after August 1, 1912:

(*a*) Where location is made by agent or attorney the power of attorney must be in writing and must be executed and acknowledged in accordance with the laws of the Territory of Alaska or of the State, Territory, or District in which it shall be executed. It must be recorded in the proper recorder's office as prescribed by the act. The application for patent must be accompanied by a certified copy of such power of attorney, which must show the recordation thereof, but it will be sufficient if such certified copy is attached to and made a part of the abstract of title.

(*b*) One of the principal purposes of the act is to limit the number of placer-mining locations made in Alaska through agents or attorneys. An agent or attorney can not at one time represent more than two individuals or one association under powers of attorney. A duly authorized agent may make two locations for each of two individual principals, or for one association principal, during any calendar month, but he can make no further locations during that month for those or other principals.

The application for patent should accordingly be accompanied by the sworn statement of the agent or attorney setting forth specifically the names of all placer-mining claims, together with the dates of location and names of the locators, which were located or attempted to be located by him under powers of attorney during the calendar month in which the placer claim applied for was located.

(*c*) By section 3 it is prescribed that no person shall directly locate, or through an agent or attorney cause or procure to be located, for himself, more than two placer-mining claims in any calendar month, provided, however, that one or both of such locations may be included in an association claim.

Whenever a person or an association has participated in the locating of placer-mining claims in Alaska to the extent of two such claims in any calendar month, such person or such association thereby exhausts the right to make placer locations for that month. The application for patent, therefor, for a placer-mining claim located in Alaska on or after August 1, 1912, must contain or be accompanied by a specific statement, under oath, as to each locator who had an interest therein, showing specifically and in detail all placer locations made by him, or in which he was associated, either directly or through any agent or attorney, during the calendar month in which the claim applied for was located. If no locations in excess of those permitted by law were made during such calendar month, a specific statement, under oath, to that effect should be submitted. This showing must be made in addition to that hereinabove required of the agent himself.

Section 4 of the act, as amended, prohibits the patenting of any placer-mining claim located in Alaska after the passage of the act, which contains a greater area than that fixed by law or which is longer than three times its greatest width. The act of March 3, 1925 (43 Stat. 1118), provides that the greatest width of a placer claim in Alaska shall be determined by a transverse line drawn within the lines of the claim and at right angles to its longest side, and that this dimensional restriction shall not apply to any isolated parcel of placer ground which lies between and adjoins patented or validly located claims on all of its sides, and is not over 1,320 feet in length. The cadastral engineer in charge will be careful to observe the above requirements and will not approve any survey of a placer location which does not in area and dimensions conform to the provisions of law.

By section 5 of the act it is declared that any placer-mining claim attempted to be located in violation of the provisions and limitations of the act shall be null and void and the whole area covered by such attempted location may be located by any qualified person the same as if no such prior attempted location had been made. Consequently, any attempted placer location not made in conformity with the act is a nullity, and the land covered thereby is open for and subject to proper location at any time.

It will be observed that the act does not affect the number of claims, lode or placer, and if placer, whether located before or after the passage of the act, which may be included in a single application proceeding.

ANNUAL ASSESSMENT WORK

3. Under the act of March 2, 1907 (34 Stat. 1243), an unpatented mining claim in Alaska becomes forfeited for failure to complete the required assessment work during any assessment period, the act containing no provision for the protection or preservation of such claim through resumption of work.

IDENTIFICATION OF LANDS

4. A statement as to the descriptions which should be incorporated in field notes of survey not tied to a corner of the public survey, and in applications for patent based thereon, is given under the heading "Surveys."[23]

PLATS AND FIELD NOTES

5. Copies of the plats and field notes of survey in mining cases will be made and disposed of in accordance with instructions given under the heading "Surveys."[23a]

RATES FOR NEWSPAPER PUBLICATIONS

6. Section 2334 of the Revised Statutes provides for the appointment of surveyors to survey mining claims, and authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the State for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $10 for each 10 lines of space occupied where publication is had in a daily newspaper, and where a weekly newspaper is used as a medium of publication, $7.50 shall be the maximum charge for the same space. Such charge shall be accepted as full payment for publication in each issue for the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that the notices are to be set in the usual body type used for legal notices.

Further information relative to publication and a sample of advertisement set up in accordance with Government requirements is given in Circular No. 943 (50 L. D. 556).

ABSTRACT

7. In the Territory of Alaska, the application for patent will be received and filed and the order for publication issued, if the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

SPECIAL AFFIDAVIT

8. Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated affidavit showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under

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[23] See p. 254, par. 5.

[23a] See p. 256, par. 10.

said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

ADVERSE CLAIM

9. The act of June 7, 1910 (36 Stat. 459) provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision applies to any application where the 60-day period of publication ended with or ends after June 7, 1910, and operates to enlarge by 8 months additional the time within which an adverse claim may be filed. This provision does not apply to any application under which the 60-day period of publication ended with or before June 6, 1910; for if no adverse claim was seasonably filed in such case the statutory assumption that none existed has arisen, upon the expiration of the publication period, in favor of the applicant.

It is also provided by the act that adverse suits may be instituted at any time within 60 days after the filing of adverse claims in the local land office. This provision applies to any adverse claim under which the 30-day period fixed under the former law for commencing the adverse suit was running on or expired with June 7, 1910, and enlarges such time to a period of 60 days, and also to any adverse claim which is seasonably filed on or after June 7, 1910. Such provision has no operation in a case where, under the former law, the 30-day period within which to institute suit on an adverse claim expired with or ended before June 6, 1910, and the 60-day publication period also expired on or before June 6, 1910.

Registers and receivers of United States land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with or after June 7, 1910, no entry will in any event be allowed until after the expiration of the 8 months' period following the publication period.

OIL AND GAS PERMITS AND LEASES

10. By Executive order dated November 3, 1910, all the public lands and lands in national forests in the Territory of Alaska containing petroleum deposits were withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

The disposition of oil and gas deposits in lands owned by the United States in Alaska is governed by the act of February 25, 1920 (41 Stat. 437), known as the mineral leasing act.

In the administration of this act prospecting permits and leases are issued. In Alaska there may be allowed a maximum of five permits of an area of not exceeding 2,560 acres each. "One individual, corporation, or association may locate and obtain but one permit in a geologic structure of a nonproducing field, but for development purposes assignments to a qualified individual, corporation, or association, outside producing oil or gas fields, for not exceeding five permits in Alaska, whether contiguous or noncontiguous, may be presented for the consideration of the Secretary of the Interior, and his approval, if he shall find same to be in the public interest" (48 L. D. 46).

If it is desired to acquire a preference right to a permit, it is necessary to erect a monument and post notice on the land desired, after which the locator has for six months a preferential right to file an application. Permits, when granted, are for a period of four years.

Upon establishing that valuable oil or gas deposits have been discovered on the land the permittee is entitled to a lease for one-fourth of the area embraced in his permit, or for as much as 160 acres if there be that number of acres in the permit, and a preference right to a lease for the remainder of the land included in the permit. The royalties on leases in Alaska are set forth in Circular No. 672, referred to below.

A distinction is made between lands which are within and which are without the known geologic structure of a producing oil or gas field. Permits, as set forth in the foregoing, are issued for the latter class of lands. Up to the present time there are, with the exception of a small area near Katalla, no producing structures in Alaska, and with this exception and possibly the Yakataga field the boundaries or possible structures of fields have not been ascertained.

Further instructions relative to oil and gas permits and leases under the act of February 25, 1920, and the amendatory act of April 30, 1926 (44 Stat. 373), are given in Circulars Nos. 672 (47 L. D. 437), 845 (49 L. D. 207), 905 (50 L. D. 155), 929 (50 L. D. 387), 979 (51 L. D. 50), and 1073 (51 L. D. 475).

PHOSPHATE AND OIL SHALE LEASES AND SODIUM PERMITS AND LEASES

11. The disposition of deposits of phosphate, oil shale, and sodium in lands owned by the United States in Alaska is also governed by the act of February 25, 1920 (41 Stat. 437).

Instructions governing the issuance of leases for deposits of phosphate and oil shale and of permits and leases for deposits of sodium are contained in Circulars Nos. 696 (47 L. D. 513), 671 (47 L. D. 424), and 699 (47 L. D. 529),[24] respectively, as amended by Circular No. 1073 (51 L. D. 475).

POTASSIUM PERMITS AND LEASES

12. The act of February 7, 1927 (44 Stat. 1057), authorizes the exploration for and disposition of deposits of potassium in lands owned by the United States, including Alaska. Instructions under the act are contained in Circular No. 1120.

Mission Sites

Applications and proofs for mission claims will be governed by regulations contained in Circular No. 491, approved September 8, 1923 (50 L. D. 55).

District Land Offices

A district land office is located at Anchorage, in charge of a register, and district land offices are located at Fairbanks and Nome, each in charge of an ex officio register and an ex officio receiver. The land district boundaries are shown on map attached to this publication.[25]

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[24] Circular No. 699 (47 L. D. 529) has been superseded by Circular No. 1194, p. 976.

Public Survey Office

A public survey office is maintained at Juneau, and correspondence relating to local survey matters should be addressed to the cadastral engineer in charge of that office.

Office of Division Inspector [25a]

The office of the division inspector for Alaska is situated at Anchorage. Field examinations in the Territory are made under the supervision of that officer.

Parks and Cemeteries

The sale of public lands for parks and cemeteries to incorporated cities and towns is authorized by the act of September 30, 1890 (26 Stat. 502).

The sale of public lands for cemetery purposes to religious or fraternal associations or private corporations authorized to hold real estate for such purposes is authorized by the act of March 1, 1907 (34 Stat. 1052).

Regulations under both acts which are applicable to Alaska are contained in Circular No. 1122 (52 L. D. 106–131).

Reservations in Patents

All patents for lands in Alaska will reserve a right of way thereon for ditches or canals constructed by the authority of the United States under the act of August 30, 1890 (26 Stat. 371–391), and all patents for lands in the Territory taken up, entered, or located subsequent to the passage of the act of March 12, 1914 (38 Stat. 305), will reserve to the United States a right of way for the construction of railroads, telegraph, and telephone lines.

In addition to the reservations mentioned, other appropriate reservations will be inserted in the patents, if required by the special laws relating to the particular entries or selections.[26]

Public Lands in Alaska

The total area of the Territory is about 378,165,760 acres, of which about 30,000,000 acres are reserved. Of the reserved area, 21,391,742 acres are within the boundaries of national forests. Approximately 1,790,199 acres have been surveyed under the rectangular system.

INFORMATION RESPECTING VACANT AND ENTERED LANDS

Where the public surveys have been extended over lands in Alaska township diagrams and plats giving the information specified below may be prepared and sold by the register and receiver of the land office for the district in which the land is situated, at the following prices:

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[25] The map is inserted between pages 190 and 191.

[26] See p. 217, par. 3.

[25a] The designation of this officer has been changed to Chief of Field Division. See instructions of Sept. 28, 1928, p. 1037.

For a township diagram showing entered land only	$1.00
For a township plat showing form of entries, names of claimants, and character of entries	2.00
For a township plat showing form of entries, names of claimants, character of entries, and numbers	3.00
For a township plat showing form of entries, names of claimants, character of entries, numbers, and date of filings or entries, together with topography, etc	4.00

If, because of the pressure of current business relating to the entry of lands, registers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of their reason for not furnishing the plats requested; that he may make the plats or diagrams himself or have same made by his agent or attorney; and that he may have access to the plats and tract books of the district land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

The district officers furnish prospective settlers general advise as to lands in their respective districts. However, personal inspection must be made of the tract to be entered before application is filed, and the settler should exercise great care to satisfy himself as to its character before taking any other step.

Rights of Way for Railroads, Wagon Roads, and Tramways

1. The rights of way for railroads, wagon roads, and tramways in the Territory of Alaska, granted by sections 2 to 9, inclusive, of the act of May 14, 1898 (30 Stat. 409), does not convey an estate in fee in the lands used for such purposes or in the lands used for station and terminal facilities. The grant is merely of a right of use for the necessary and legitimate purposes of the roads, the fee remaining in the United States, except as to lands authorized to be sold under section 6 by the Secretary of the Interior, "upon such expressed conditions as in his judgment may be necessary to protect the public interests." The nature of these conditions will depend upon the public necessities and will be governed by the particular circumstances of each case. These sections authorize the Secretary of the Interior to approve maps and plats affecting unsurveyed as well as surveyed land, and, while it is not obligatory on the part of grantees to file additional maps and plats after survey of the lands, showing connections with the public surveys, and the smallest legal subdivisions of all lands affected, by so doing the grants and the extent thereof could be properly recorded on the records of the land department and readily determined.

RIGHT OF WAY INCLUDED IN AREA ENTERED

2. All persons entering public lands, to part of which a right of way has attached, take the same subject to such right of way, the latter being computed as a part of the area of the tract entered.

CONDEMNATION OF RIGHT OF WAY

3. Whenever any right of way shall pass over private land or possessory claims on lands of the United States, condemnations of the right of way across the same may be made in accordance with the provisions of section 4 of the said act of May 14, 1898.

INCORPORATED COMPANIES

4. Any incorporated company desiring to obtain the benefits of these sections is required to file the following papers and maps:

First. A copy of its articles of incorporation duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

Second. A copy of the State or Territorial law under which the company was organized, with the certificate of the governor or secretary of the State or Territory that the same is the existing law.

Third. When said law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

Fourth. A certificate from the secretary of the Territory of Alaska showing that the company has complied with chapter 23, title 3, act of June 6, 1900 (31 Stat. 528), providing a civil code for the Territory of Alaska.

No forms are prescribed for the above portion of the proofs required, as each case must be governed to some extent by the laws of the State or Territory.

Fifth. The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory where organized. (Form 1, see note, p. 70.)

Sixth. A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, see note, p. 70.)

Seventh. If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to this office by the governor or secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of the second subdivision of this paragraph, a certificate of the governor or secretary of the State or Territory that no change has been made since a given date, not later than that of the laws last forwarded.

Eighth. Maps, field notes, and other papers as hereinafter required.

INDIVIDUALS OR ASSOCIATIONS OF INDIVIDUALS

5. Individuals or associations of individuals making applications for a permits, under section 6 of the act, for tramways or wagon roads are required to file evidence of citizenship. In the case of associations an affidavit must be filed by the principal officer thereof, giving a list of its members and stating that the list includes all the members. Evidence of citizenship must be furnished for each member

of the association. Individuals and associations will also be required to file the maps, field notes, and other papers hereinafter required.

PREPARATION OF MAPS AND PLATS

6. All maps and plats must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey thereof, wherever such surveys have been made. The word "profile" as used in the act is understood to intend a map of alignment. No profile of grades will be required.

DATA REQUIRED ON MAPS

7. The maps should show any other road crossed or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right of way. Field notes of the surveys should be written along the line on the map. If the map should be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. Station numbers should also be given on the map in all cases where changes of numbering occur and where known lines of survey, public or otherwise, are crossed, with distance to the nearest permanent monument or other mark on such line. The map must also show the lines of reference of initial, terminal, and intermediate points, with their courses and distances.

When the lines are located on surveyed land, the maps must show the 40-acre subdivisions; when on unsurveyed land, a meridian should be drawn on maps through initial and terminal points and at intervals of not more than 6 miles, intermediate points.

DATA REQUIRED IN FIELD NOTES—INSTRUCTIONS AS TO SURVEYS

8. Typewritten field notes, with clear carbon copies, are preferred, as they expedite the examination of applications. All monuments and other marks with which connections are made should be fully described, so that they may be easily found. The field notes must be so complete that the line may be retraced on the ground. On account of the conditions existing in Alaska surveys based wholly on the magnetic needle will not be accepted. In that case a true meridian should be established, as accurately as possible, at the initial point. It should be permanently marked and fully described. The survey should be based thereon and checked by a meridian similarly fixed at the terminal point and, when the line is a long one, by intermediate meridians at proper intervals. On account of the rapid convergence of the meridians in these latitudes such intermediate meridians should be established at such intervals as to avoid large discrepancies in bearings. It will probably be found preferable to run by transit deflections from a permanently established line, with frequent and readily recoverable reference lines permanently marked; and in such surveys occasional true bearings should be

stated, at least approximately. On all lines of railroad the 10-mile sections should be indicated and numbered, and on maps of tramways and wagon roads the 5-mile sections shall likewise be indicated and numbered.

FILING OF PAPERS

9. The maps, field notes, and accompanying papers should be filed in the district land office for the district where the proposed right of way is located.

CONNECTIONS WITH OTHER SURVEYS

10. Connections should be made with other surveys, public or private, whenever possible; also with mineral monuments and other known and established marks. When a sufficient number of such points are not available to make such connections at least every 6 miles, the surveyor must make connection with natural objects or permanent monuments.

PERMANENT MONUMENTS OR MARKS

11. Along the line of survey, at least once in every mile, permanent and easily recoverable monuments or marks must be set and connected therewith, in such positions that the construction of the road will not interfere with them. The locations thereof must be indicated on the maps. All reference points must be fully described in the field notes, so that they may be relocated, and the exact point used for reference indicated.

DESIGNATION OF TERMINI

12. The termini of a line of road should be fixed by reference of course and distance to a permanent monument or other definite mark. The initial point of the survey and of station, terminal, and junction grounds should be similarly referred. The maps, field notes, engineer's affidavit, and applicant's certificate (Forms 3 and 4, see note, p. 241) should each show these connections.

AFFIDAVIT AND CERTIFICATE REQUIRED

13. The engineer's affidavit and applicant's certificate must be written on the map, and must both designate by termini (as in the preceding paragraph) and length in miles and decimals the line of route for which right of way application is made. (See Forms 3 and 4.) Station, terminal, or junction grounds must be described by initial point (as in the preceding paragraph) and area in acres (Forms 7 and 8, see note, p. 241), when they are located on surveyed land, and the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. When the applicant is an individual the word "applicant" should be used instead of "company," and such other changes made as are necessary on this account.

ADDITIONAL WIDTH FOR RIGHT OF WAY

14. Where additional width is desired for railroad right of way on account of heavy cuts or fills, the additional right of way desired

should be stated, the reason therefor fully shown, the limits of the additional right of way exactly designated, and any other information furnished that may be necessary to enable the Secretary of the Interior to consider the case before giving it his approval.

PRELIMINARY MAP AND FIELD NOTES

15. The preliminary map authorized by the proviso of section 4 of the act will not be required to comply so strictly with the foregoing instructions as maps of definite location; but it is to be observed that they must be based upon an actual survey, and that the more fully they comply with these regulations the better they will serve their object, which is to indicate the lands to be crossed by the final line and to preserve the company's prior right until the approval of its maps of definite location. Unless the preliminary map and field notes are such that the line of survey can be retraced from them on the ground, they will be valueless for the purpose of preserving the company's rights. The preliminary map and field notes should be in duplicate, and should be filed in the district land office in order that proper notations may be made on the records as notice to intending settlers and subsequent applicants for the right of way.

SCALE OF MAPS

16. The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a scale of 1,000 feet to an inch when necessary, or, in extreme cases, to 500 feet to an inch. No other scales must be used and should be so selected as to avoid making maps inconveniently large for handling. In most cases, by furnishing separate field notes, an increase of scale can be avoided. Plats of station, terminal, and junction grounds, etc., should be drawn on a scale of 500 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

PLATS OF STATION, TERMINAL, AND JUNCTION GROUNDS

17. Plats of station, terminal, and junction grounds must be prepared in accordance with the directions for maps of lines of routes. Whenever they are located on or near navigable waters the shore line must be shown, and also the boundaries of any other railroad grounds or other claims located on or near navigable waters within a distance of 80 rods from any point of the tract applied for.

SHOWING REQUIRED IN APPLICATION

18. All applications for permits made under section 6 of this act should state whether it is proposed to collect toll on the proposed wagon road or tramway; and, in case of wagon roads, the application must be accompanied by satisfactory evidence, corroborated by an affidavit, tending to show that the public convenience requires the construction of the proposed road, and that the expense of making the same available and convenient for public travel will not be less, on an average, than $500 per mile. In all cases, if the proposed line of road shall be located over any road or trail in common use for

public travel, a satisfactory statement, corroborated by affidavit, must be submitted with the application, showing that the interests of the public will not be injuriously affected thereby.

ACTION ON FILING OF APPLICATION

19. When maps are filed the district officers will make such pencil notations on their records as will indicate the location of the proposed right of way as nearly as possible. They should note that the application is pending, giving the date of filing and name of applicant. They must also indorse on each map and other paper the date of filing, over their written signature, transmitting them promptly to the General Land Office.

ACTION ON APPROVAL OF MAP

20. Upon the approval of a map of definite location or station plat by the Secretary of the Interior the duplicate copy will be sent to the register and receiver, who will make such notations of the approval on their records, in ink, as will indicate the location of the right of way as accurately as possible.

AFFIDAVIT AND CERTIFICATE REQUIRED WHEN ROAD IS CONSTRUCTED

21. When the road is constructed, an affidavit of the engineer and certificate of the applicant (Forms 5 and 6, see note, p. 241) should be filed in the district land office in duplicate for transmission to the General Land Office. In case of deviations from the map previously approved, whether before or after construction, there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case, and the location must be described in the forms as the *amended* survey and the *amended* definite location. In such cases the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior.

ACTION WHERE REQUIRED EVIDENCE IS NOT FILED

22. Unless the proper evidence of construction is filed within the time prescribed by the act for the construction of each section of the road, appropriate steps will be taken looking to the cancellation of the approval of the right of way and the notations thereof on the records.

CHARGES FOR TRANSPORTATION OF PASSENGERS AND FREIGHT

23. In the case of a wagon road or tramway built under permit issued under section 6 of this act, upon which it is proposed to collect toll, a printed schedule of the rates for freight and passengers should also be filed with the Commissioner of the General Land Office for submission to the Secretary of the Interior for his consideration and approval at least 60 days before the road is to be opened to

traffic, in order to allow a sufficient time for consideration, inasmuch as by section 6 it is made a misdemeanor to collect toll without written authority from the Secretary of the Interior. In the case of a wagon road satisfactory evidence, corroborated by affidavit, must be submitted with said schedule, showing that at least an average of $500 per mile has been actually expended in constructing such road. These schedules must be submitted in duplicate, one copy of which, bearing the approval of the Secretary of the Interior, will be returned to the applicant if found satisfactory. Said schedules shall be plainly printed in large type.

Schedules of passenger and freight rates on railroads should be filed with the Interstate Commerce Commission.

NOTE.—For Forms 1 to 8, inclusive, for due proofs and verification of maps of rights of way for railroads, tramways, wagon roads, etc., see 50 L. D., pp. 75 to 78, inclusive.

RIGHTS OF WAY FOR RESERVOIRS AND CANALS, AND FOR POWER, TELEPHONE AND TELEGRAPH PURPOSES, ETC.

On the general applicability of right-of-way laws in the Territory, the Attorney General in an opinion dated June 29, 1915 (30 Op. Atty. Gen. 387), responding to an inquiry whether it would be lawful to grant revocable licenses under the act of February 15, 1901 (31 Stat. 790), or easements under the act of March 4, 1911 (36 Stat. 1253), held, after a full review of all the statutes and departmental decisions thereon, and especially of the act of August 24, 1912 (37 Stat. 512), providing for the full organization of the Territory and the extension of all the laws of the United States to the Territory not locally inapplicable, that such action was authorized, for the reason that said acts of Congress were now applicable to the public lands in Alaska.

By analogy it would appear that the provisions of sections 18 to 21, inclusive, of the act of March 3, 1891 (26 Stat. 1095), as amended by section 2 of the act of May 11, 1898 (30 Stat. 404), allowing rights of way for canals, ditches, and reservoirs to canal and ditch companies formed for purposes of irrigation, are also applicable to public lands in Alaska and it has been so held since said opinion.

Section 4 of the act of February 1, 1905 (33 Stat. 628), granting rights of way for dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals within and across the forest reserves of the United States, applies to and is operative in forest reserves in the Territory.

EFFECT OF FEDERAL WATER POWER ACT

It is to be noted, however, that the act of June 10, 1920 (41 Stat. 1063), known as the Federal water power act, as amended by the act of March 3, 1921 (41 Stat. 1353), has superseded and repealed all acts or parts of acts inconsistent therewith, providing for the development and transmission of water power on the public domain and certain reservations of the United States, and that this act is applicable to Alaska. Applications thereunder should be filed with the

Federal Power Commission, Washington, D. C. But electrical projects that are in no way connected with water power—for instance, those where the electrical power is generated by steam—remain under the jurisdiction of this department, pursuant to the provisions of the act of February 15, 1901 (31 Stat. 790), and that of March 4, 1911 (36 Stat. 1253), where the land involved is not within a national forest.

GENERAL INSTRUCTIONS

The general instructions and regulations regarding the various rights of way above referred to are found in departmental circulars relating to such rights in the United States. See circulars approved January 6, March 1, and July 19, 1913 (41 L. D. 454, 532 and 42 L. D. 348), and circular of June 6, 1908 (36 L. D. 567, reprinted in circular form in 1923, with amendments).

Right of Way for Roadway

A provision is made in section 10 of the act of May 14, 1898 (30 Stat. 409), that—

> A roadway 60 feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway.

The phrase " shore line " as thus used means high-water line.

This reservation occurs in the proviso relating to the reservation between claims abutting on navigable waters; but since it is its purpose to reserve a roadway for public use as a highway along the shore line of navigable waters, it is held to relate to the lands entered or purchased under this act as well as to the reserved lands; otherwise it would serve little or no purpose. This reservation will not, however, prevent the location and survey of a claim up to the shore line, for in such case the claim will be subject to this servitude and the area in the highway will be computed as a part of the area entered and purchased.

Section 26 of the act of June 6, 1900 (31 Stat. 330), provides that the reservation for roadway shall not apply to mineral lands or town sites.

The reservation for roadway should not be inserted in patents (Departmental Instructions of March 15, 1915).

School Lands and Scrip Locations

By the act of March 4, 1915 (38 Stat. 1214), sections numbered 16 and 36 in every township, not known to be mineral in character at the date of acceptance of survey, on which no settlement has been made before the survey of the land in the field, and which have not been sold or otherwise appropriated by authority of Congress, are reserved for the support of the common schools in Alaska.

Section 33 in each township between parallels 64° and 65° of north latitude and between 145° and 152° of west longitude are reserved for the support of a Territorial agricultural college and school of mines.

In reporting as to the completion of surveys in the field, under Circular No. 996, the district cadastral engineer will prepare his letter of advice in triplicate, the original and one carbon to be forwarded to the Commissioner of the General Land Office and the third copy to be transmitted directly to the division inspector. Where less than a full township is involved, the report will list any and all school sections embraced therein.

Upon receipt of such notification, the division inspector will take appropriate action looking to the examination and report with a view to classification of the school sections affected as mineral or nonmineral, subject, however, to such instructions as may be received from the General Land Office with reference to forest or other withdrawals which would render field examination unnecessary. Where any school section is reported as mineral, opportunity will be afforded the proper officers of the Territory to disprove such finding.

SCHOOL SELECTIONS

Where any of said sections are lost to the reservations mentioned, in whole or in part, because of prior settlement or sale, or other appropriation under an act of Congress, or where they are wanting or are fractional in quantity, indemnity lands may be designated and reserved in lieu thereof, as provided in the act of February 28, 1891 (26 Stat. 796). The regulations providing for such selections by the States will be followed in Alaska.

Each application for selection must be accompanied by a duly corroborated affidavit showing:

(1) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived and that it is not within a distance of 80 rods along any navigable or other waters from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation.[27]

(3) That the land is not included within an area which is reserved because of springs or water holes thereon. All facts relative to medicinal or other springs or water holes must be stated, as set forth in paragraph 3 under the heading " Springs and Water Holes."[28]

(4) The facts as to all waters upon the land other than springs and water holes, whether creek, pond, lagoon or lake, their source, depth, width, outlet and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motor boats, launches or other small water craft and whether or not the same or any of them constitute a passageway for salmon or other merchantable sea-going fish to spawning grounds.

(5) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of the application no part of the land was claimed under the mining laws.

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[27] See p. 244.

[28] See p. 253.

LEASING OF SCHOOL LANDS

The Territory is authorized to provide by law for the leasing of its school lands, it being stipulated, however, that no greater area than one section shall be leased to any person, association, or corporation, and that leases shall not be for longer periods than 10 years.

SCRIP LOCATIONS

Aside from the right of the Territory of Alaska to select lands in lieu of tracts to which it may be entitled, under its grant in aid of public schools made by the act of March 4, 1915 (38 Stat. 1214), and which have been lost, no scrip or lieu rights can be located in said Territory except soldiers' additional homestead rights.

Shore Space Restrictions and Reservations

1. A soldier's additional entry or school indemnity selection may not be made in Alaska within a distance of 80 rods (one-quarter of a mile), of any lands along any navigable *or other waters* theretofore located as such entry, selection, or otherwise.

On the shores of navigable waters a space of at least 80 rods is reserved between claims, including homestead settlements and entries (not in national forests), allotments to Indians and Eskimos, which are considered as homesteads, soldiers' additional entries, trade and manufacturing sites, and school-indemnity selections, but not including mission sites (44 L. D. 83) or mining claims (43 L. D. 120).

Homestead settlements and entries (not in a national forest), allotments to Indians and Eskimos, soldiers' additional entries, and school-indemnity selections may not extend more than 160 rods along the shore of any navigable water.

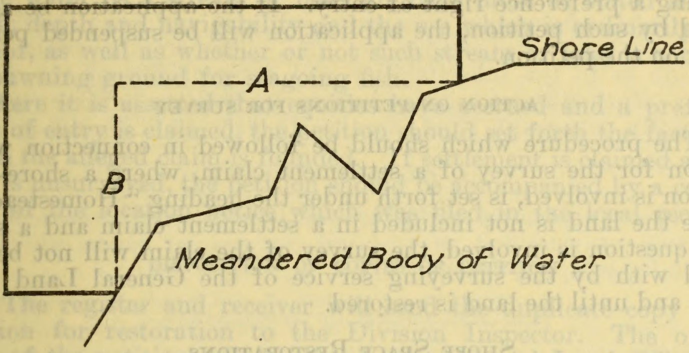
A trade and manufacturing site may not abut more than 80 rods of navigable water.

RESTRICTION AS TO LENGTH OF CLAIMS

2. In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the shortest distance between the two side lines of the subdivision, measured from the shore corner nearest the back line of the tract; and the sum of the distances of each subdivision of the application abutting on the waters, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B," whichever is the longer, representing the length of shore space which is chargeable to the tract:



RESERVATION BETWEEN CLAIMS

3. To make effective the limitations of claims along the shore line and the reservation of 80 rods between all such claims, it is directed that where any claim is so located as to approach within 80 rods of the actual shore line such claim will be considered as located on the shore for that purpose. Such constructive extension to the shore line of claims so located shall not work a reservation of the land in front of such claims and between them and the shore line, but such lands shall be open and subject to appropriation under and in accordance with any appropriate law, and between all such claims, or the constructive extension thereof, the reserve strip shall extend for a distance of 80 rods from the shore line.

"NAVIGABLE WATERS" DEFINED

4. The term "navigable waters" is defined in section 2 of the act of May 14, 1898 (30 Stat. 409),

> * * * to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary high-water mark.

This definition, however, is not taken as intending to include all nontidal waters that are in fact navigable, irrespective of their extent or suitability for transportation purposes, travel, etc., and such factors will be considered in passing upon the question of the navigability of nontidal waters.

"OR OTHER WATERS" DEFINED

5. The words "or other waters," as used in the provisos, are held to include all waters of sufficient magnitude to require meandering under the manual of surveys, or which are used as a passageway or for spawning purposes by salmon or other seagoing fish.

ACTION ON APPLICATIONS TO ENTER

6. The register and receiver will reject any application to enter which conflicts with a shore space reservation or restriction, unless it be accompanied by a petition for restoration, asserting equities and claiming a preference right of entry. If the application be accompanied by such petition, the application will be suspended pending action on the petition.

ACTION ON PETITIONS FOR SURVEY

7. The procedure which should be followed in connection with a petition for the survey of a settlement claim, where a shore-space question is involved, is set forth under the heading "Homesteads."[29] Where the land is not included in a settlement claim and a shore-space question is involved, the survey of the claim will not be proceeded with by the surveying service of the General Land Office unless and until the land is restored.

Shore Space Restorations

1. The act of June 5, 1920 (41 Stat. 1059), authorizes the Secretary of the Interior in his discretion "upon application to enter or otherwise" to waive the 160-rod restriction as to length of claims or to restore to entry and disposition the reserved shore spaces. The 80-rod restriction, in the case of trade and manufacturing sites, can not be waived.

PETITION FOR RESTORATION

2. Any person who wishes to secure such waiver or restoration should file a petition therefor, in duplicate, in the proper district land office. The petition must be sworn to by the applicant and must be corroborated by the affidavits of two persons having knowledge of the facts. The affidavits may be executed before the register or the receiver, or the acting register, of the district in which the lands lies, or before any court, judge, or other officer having a seal and authority to administer an oath, anywhere in the Territory or in the United States outside of the Territory.

PREFERENCE RIGHT

3. The applicant will not secure a preference right to enter the tract by the filing of the petition unless it is based on equities deemed sufficient in the opinion of the Secretary of the Interior.

DESCRIPTION OF LAND IN PETITION

4. If the land be surveyed, it should be described by legal subdivisions of the public land surveys. If unsurveyed, it should be described by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The description should be tied to known monuments, towns, and natural objects whenever practicable.

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[29] See p. 213.

SHOWING REQUIRED IN PETITION

5. The petition must contain a full statement as to all pending claims on each side of the tract bordering along the water in question and as to the availability of the land sought for harbor purposes, and, if the water be a stream or lake, all facts must be stated as to its width, depth and navigability and the use which is ordinarily made thereof, as well as whether or not such stream or lake is a runway or spawning ground for seagoing fish.

Where it is asserted that equities have accrued and a preference right of entry is claimed, the petition should set forth the facts upon which the alleged claim is founded. If settlement is claimed and the land is unsurveyed, the petition should be accompanied by a certified copy of the location notice which was filed in the local recording office.

DISPOSITION OF COPIES OF PETITION

6. The register and receiver will send the duplicate copy of the petition for restoration to the Division Inspector. The original copy of the petition will be sent to the General Land Office, with notation thereon showing the fact of the reference of the duplicate copy to the Division Inspector.

REPORT BY DIVISION INSPECTOR

7. The Division Inspector will make report to the Commissioner of the General Land Office as to whether or not there is objection to the waiver or restoration requested.

RESTORATIONS ON MOTION OF DEPARTMENT

8. Restorations may also be made by the department on its own motion, where, after field investigation, it is found that such action is authorized by the statute and required by the public interest.

LANDS NECESSARY FOR HARBORAGE USES

9. Lands found necessary for harborage uses or other public purposes will be excluded from orders of restoration and included within an appropriate order of withdrawal under the act of June 25, 1910 (36 Stat. 847).[30]

LANDS RESERVED AS ROADWAY

10. The act of June 5, 1920, does not modify that clause in section 10 of the act of May 14, 1898 (30 Stat. 409, 413), which provides that a roadway 60 feet in width, as nearly parallel to the shore line of navigable waters as may be practicable, shall be reserved for the use of the public as a highway.[31]

Soldiers' Additional Homestead Entries

1. The laws authorizing entries in Alaska under sections 2306 and 2307, United States Revised Statutes, known as soldiers' additional

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[30] See p. 226.

[31] See p. 242.

homestead entries, are incorporated as a part of the general homestead laws which are applicable in the Territory. These laws are printed under the heading "Homesteads."[32]

GENERAL INFORMATION

2. General information relative to soldiers' additional homestead rights is contained in Circular No. 1047. This circular contains information as to the inheritability and assignability of the rights. Further information of a general character relative to these rights is contained in paragraph 17 of Circular No. 616 (46 L. D. 513–516).

COAL, OIL, AND GAS LANDS

3. Soldiers' additional rights are not locatable on lands in Alaska withdrawn or classified as coal, oil, or gas, or lands which are valuable for coal, oil, or gas.[33]

PRESCRIBED FORM OF APPLICATION

4. Application to locate soldiers' additional rights in Alaska must be presented on the form prescribed therefor, viz, Form 4–008a. If presented by other than an assignee, the form may be appropriately modified.

APPLICATION BY ASSOCIATION OR CORPORATION

5. An application by an association must show the qualifications of each member thereof, and an application by a corporation must be accompanied by proof of incorporation, established by the certificate of the officer having custody of the records of incorporation at the place of its formation, and it must be shown that the corporation is authorized to hold land in Alaska.

DESCRIPTION OF LAND IN APPLICATION

6. If the land be surveyed, it must be described in the application according to the legal subdivisions of the public land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey.

AFFIDAVIT REQUIRED WITH APPLICATION ON PRESCRIBED FORM

7. An application on the prescribed form must be accompanied by a duly corroborated affidavit showing:

(1) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived, and that it is not within a distance of 80 rods along any navigable or other waters from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing

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[32] The laws have not been included in this publication.

[33] See p. 217, par. 5.

site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation.[34]

(3) That the land does not adjoin any inland or water-front location made with soldiers' additional rights which, together with the land applied for, would constitute a single body of land exceeding 160 acres.

(4) That the land is not included within an area which is reserved, because of springs or water holes thereon. All facts relative to medicinal or other springs or water holes must be stated, as set forth in paragraph 3 under the heading "Springs and Water Holes."[35]

(5) The facts as to all waters upon the land other than springs and water holes, whether creek, pond, lagoon, or lake, their source, depth, width, outlet, and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motor boats, launches, or other small water craft, and whether or not the same or any of them constitute a passageway for salmon or other merchantable seagoing fish to spawning grounds.

(6) That no part of the land is valuable for coal, oil, gas or other valuable mineral deposits and that at the date of the application no part of the land was claimed under the mining laws.

EXECUTION AND FILING OF APPLICATION

8. The application must be executed in duplicate and it must be filed in the proper district land office. It may be sworn to before any officer authorized to administer oaths in homestead cases in Alaska.[36]

EVIDENCE REQUIRED OF VALIDITY AND OWNERSHIP OF RIGHT

9. The applicant must furnish evidence of the prima facie validity of the additional right and of his ownership thereof.

EXCESS IN AREA OF SELECTION OVER AREA OF RIGHT OR RIGHTS TENDERED NOT PERMITTED

10. An applicant will not be permitted to select an area which is greater than the area of the additional right or rights tendered.

EVIDENCE FURNISHED OF UNUSED PORTION OF CERTIFICATE OR RECERTIFIED CERTIFICATE

11. If the right used is a certificate or recertified certificate which exceeds the area of the land entered, evidence of the unused portion may be obtained by procuring a certified copy or photostat copy of the certificate bearing proper notation as to the amount used.

ACTION ON APPLICATION—REPORT OF DIVISION INSPECTOR

12. Upon receipt of the application the register and receiver will note its filing, assign a current serial number thereto, and transmit the original copy, unallowed, together with the accompanying papers, to the General Land Office. They will forward the duplicate copy

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[34] See p. 244.

[35] See p. 253.

[36] See p. 209, par. 7.

of the application to the division inspector for report. With each copy they will report the status of the land as shown by their records.

The report of the division inspector will be made to the General Land Office and it should show whether the lands contain valuable deposits of coal, oil, gas, or other minerals, whether they have power or reservoir possibilities, whether they are within an area which is reserved because of hot, medicinal, or other springs, or water holes, and any other facts deemed appropriate.

APPLICATION FOR SURVEY

13. If the land applied for be unsurveyed, and no objection to its survey is known to the register and receiver, they will furnish the applicant with a certificate to the cadastral engineer in charge of the public survey office stating the facts, and, after receiving such certificate, the applicant may make application to the public survey office for the survey of the land. The register and receiver will advise the public survey office of the issuance of the certificate, and unless the applicant promptly makes application for the survey, the public survey office will report the facts to the General Land Office for such action as may be deemed proper.

SURVEY

14. Upon receipt of an application under the provisions of section 2 of the act of April 13, 1926 (44 Stat. 244), the cadastral engineer in charge of the public survey office will, if conditions make such procedure practicable and no objection is shown by his records, furnish the applicant with an estimate of the cost of field and office work, and upon receipt of the deposit required the cadastral engineer in charge will issue appropriate instructions for the survey of the claim, such survey to be made by the surveying service of the General Land Office not later than the next surveying season under the direction of the supervisor of surveys. The sum so deposited by the applicant for survey will be deemed an appropriation thereof and will be held by the public survey office to be expended in the payment of the cost of the survey, including field and office work, and upon the acceptance of the survey any excess over the cost shall be repaid by the public survey office to the depositor or his legal representative.

In case it is decided by the supervisor of surveys that by reason of the inaccessibility of the locality embraced in an application for the survey, or by reason of other conditions, it will result to the advantage of the Government or claimant to have the survey executed by a United States deputy surveyor, the public survey office will deliver to the applicant an order for such survey, which will be sufficient authority for any United States deputy surveyor to make a survey of the claim.

In the latter contingency the survey must be made at the expense of the applicant, and no right will be recognized as initiated by such application unless actual work on the survey is begun and carried to completion without unnecessary delay. Further information as to the requirements and procedure in cases of this kind is given in paragraphs 7, 8, and 9 under the heading " Surveys."

PUBLICATION AND POSTING

15. After a special survey of the land has been made, and upon receipt of the plat and field notes thereof from the public survey office, the register and receiver will notify the applicant that within 60 days from a date to be fixed by them he must furnish evidence of publication and posting, and that if he fails to do so the application will be rejected and the survey canceled. The publication and posting will be required as follows:

(1) The notice will be prepared by the register, and it must be published at the expense of the applicant for a period of at least 60 days in a newspaper of established character and general circulation designated by the register as being published nearest the land. If the newspaper be published daily, there must be 60 insertions of the notice; if daily except Sunday, 52 insertions; if semiweekly, 18 insertions; and if weekly, 9 insertions. The register and receiver will send a copy of the notice to the division inspector.

(2) The applicant must cause a copy of the plat showing the survey,[37] together with a copy of the application, to be posted in a conspicuous place on the claim for 60 consecutive days during the period of publication.

(3) The register must cause a copy of the notice to be posted in his office during the entire period of publication.

Where the land is located according to the public surveys, publication and posting will be required in accordance with instructions of February 21 and March 26, 1908 (36 L. D. 278, 346).[h]

ADVERSE CLAIM

16. In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413), during the period of posting and publication or within 30 days thereafter any person, corporation, or association having or asserting any adverse interest in or claim to the tract of land or any part thereof sought to be purchased may file in the land office where the application is pending, under oath, an adverse claim setting forth the nature and extent thereof; and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

Where such adverse claim is filed, action on the application will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title as stated and any contest which may be filed will be disposed of by the register and receiver in accordance with the rules of practice (51 L. D. 547).[38]

PROOF OF PUBLICATION AND POSTING

17. The proof of publication must consist of the affidavit of the publisher or foreman of the designated newspaper, or some other

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[37] See p. 255, par. 9(e). [38] See p. 199. [h] Also see instructions of Oct. 19, 1929, p. 1149.

employee authorized to act for the publisher, that the notice (a copy of which must be attached to the affidavit) was published for the required period in the regular and entire issue of every number of the paper during the period of publication in the newspaper proper, and not in a supplement. Proof of posting on the claim must consist of the affidavits of the applicant and one witness who of their own knowledge know that the plat of survey and application were posted as required and remained so posted during the required period. The register must certify to the posting of the notice in a conspicuous place in his office during the period of publication. The register and receiver will send the proofs to the General Land Office upon the expiration of the period for the filing of adverse claims and will report whether or not any adverse claim or protest has been filed.

FEES AND COMMISSIONS

18. The same payments as fees and commissions are required in connection with soldiers' additional homestead entries and proofs in Alaska as must be made in connection with ordinary homestead entries in the State of Oregon. The amounts are set forth in circular No. 541. These payments are not required at the time the application is filed, but, if tendered, the receiver must, of course, issue receipts therefor.

ALLOWANCE OF ENTRY AND ISSUANCE OF FINAL CERTIFICATE

19. The application and proofs filed therewith, and the report of the division inspector on the application, will be carefully examined in the General Land Office, and, if all be found regular, the register will be instructed to allow the application and to issue final certificate thereunder, upon the required payments being made and in the absence of objections shown by his records.

Springs and Water Holes

1. By Executive order of March 28, 1911, the following order of withdrawal was issued:

> It is hereby ordered that the following lands be, and the same are hereby, withdrawn from settlement, location, sale, or entry and reserved for public purposes, to wit, to enable Congress to consider legislation providing for the use of medicinal springs in the public lands in the district of Alaska, subject to all the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910.
>
> All tracts of public lands in the district of Alaska upon which hot springs or other springs the waters of which possess curative properties are located, to the extent of 160 acres surrounding each spring, in rectangular form with side and end lines equidistant, as near as may be, from such spring or group of springs.

Said order of withdrawal was modified by Executive order of January 24, 1914, so as not to apply to lands within national forests.

SPRINGS AND WATER HOLES RESERVED FOR PUBLIC WATERING PURPOSES

2. By Executive order of April 17, 1926,[39] the following order of withdrawal was issued:

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[39] See Executive order of May 4, 1929, p. 1301.

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), entitled "An act to authorize the President of the United States to make withdrawal of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat. 497), it is hereby ordered that every smallest legal subdivision of the public land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one-quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), and in aid of pending legislation.

The above order was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes. It is not, therefore, to be construed as applying to or reserving from homestead or other entry lands having small springs or water holes affording only enough water for the use of one family and its domestic animals. It withdraws those springs and water holes capable of providing enough water for general use for watering purposes.

SHOWING REQUIRED AS TO SPRINGS AND WATER HOLES

3. An applicant to enter or select lands in Alaska situated outside of a national forest must show that the land is not within an area of 160 acres surrounding any hot spring or other spring having waters possessing curative properties and that no spring or water hole of any kind exists, if it be a fact, upon any legal subdivision of the land sought to be appropriated, if surveyed, and if unsurveyed within one-quarter of a mile from the exterior boundaries of the land.

If there be any spring or water hole upon or adjacent to the land, as stated, the applicant must show the exact location and size thereof, together with an estimate of the quantity of water in gallons which it is capable of producing daily and any other information necessary to determine whether or not it is valuable or necessary as a medicinal spring or as a public water reserve.[39] Where such showing is made, the register and receiver should not allow the application, but should transmit the papers to the General Land Office for consideration.

The showing must be in affidavit form, duly corroborated.

USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

Permission may be obtained to use or improve lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat. 847), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat. 790), in accordance with the regulations governing said act, as found in 36 L. D. 567, 579, as supplemented by Circular No. 1028 (51 L. D. 186).

LEASING OF PUBLIC LANDS NEAR OR ADJACENT TO MINERAL, MEDICINAL, OR OTHER SPRINGS

The matter of leasing public lands near or adjacent to mineral, medicinal, or other springs, for the erection of bathhouses, hotels, or other improvements for the accommodation of the public is governed by Circular No. 1034 (51 L. D. 221).[i]

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[39] See Executive order of May 4, 1929, p. 1301.

[i] Circular No. 1034 has been incorporated in Circular No. 1122. See footnote, p. 1544.

System of Surveys

1. Approximately 1,790,199 acres in Alaska have been surveyed under the rectangular system, which was extended to the Territory by the Act of March 3, 1899 (30 Stat. 1074–1098). All surveys in the Territory must conform to this system, except where modification or departure therefrom is authorized by section 1 of the act of April 13, 1926 (44 Stat. 243).[40]

MERIDIANS

2. The surveys have been placed under the control of three independent meridians established as follows: The Seward Meridian, initiated just north of Resurrection Bay and extending to the Matanuska coal fields; the Fairbanks Meridian, commencing near the town of that name and controlling the surveys in that vicinity, including the Nenana coal fields; and the Copper River Meridian, which lies in the valley of the Copper River and from which surveys have been executed as far north as the Tanana River and south to the Bering River coal fields and the Gulf of Alaska.

ADMINISTRATION OF SURVEYING ACTIVITIES

3. By the act of March 3, 1925 (43 Stat. 1141, 1144), the office of surveyor general was abolished, effective July 1, 1925, and since that time the administration of all surveying activities in Alaska has been under the supervision of the United States supervisor of surveys, who has headquarters in the Federal Building at Denver, Colo. A public survey office is maintained at Juneau, Alaska, and correspondence relating to local survey matters should be addressed to the cadastral engineer in charge of that office.

EXISTING SURVEYS AND EXTENSIONS THEREOF

4. The existing surveys have been confined to known agricultural areas, the coal fields, and such adjoining lands as might under normal conditions be attractive to settlers, and areas necessary to enable the identification of lands sought to be included in oil and gas prospecting permits or leases. The extension of the surveys to other areas will be governed by the character of the lands and their occupation by actual settlers, due regard being had to whether or not the lands are in the regular progress of the extension of the public-land surveys.

IDENTIFICATION OF LANDS

5. The field notes of survey of all claims within the Territory of Alaska, and all applications for patent based thereon, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied by giving its latitude and longitude and its position with reference to rivers, creeks, mountains, or mountain peaks, towns, or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or

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[40] See p. 208, par. 2.

mining camp or to a river or mountain appearing on the map of Alaska, which description shall appear regardless of whether or not the survey be tied to an existing monument or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

SPECIAL SURVEYS

6. Information respecting special surveys of homesteads, soldiers' additional entries, and trade and manufacturing sites is given herein under those headings.

DEPOSIT REQUIRED FOR SURVEY MADE BY UNITED STATES DEPUTY SURVEYOR

7. Where application is made to have a special survey executed by a United States deputy surveyor, the cadastral engineer in charge of the public survey office at Juneau will furnish the applicant with an estimate of the cost of the platting and other office work connected with the survey and of photolithographing the plat, and such amount must be deposited with the said officer. It found insufficient to cover the cost, the applicant will be required to pay the deficiency; if in excess of the amount required, the excess will be repaid.

PLATS AND FIELD NOTES OF SPECIAL SURVEYS MADE BY UNITED STATES DEPUTY SURVEYORS

8. Hereafter United States deputy surveyors will not prepare plats of nonmineral claims in Alaska in quadruplicate and the field notes in triplicate, as has heretofore been the practice, but will submit only the preliminary returns of their surveys to the public survey office, and the plats and field notes will be prepared in that office, as is now done in the case of mineral surveys.

PLATS AND FIELD NOTES OF SPECIAL NONMINERAL SURVEYS

9. The returns of special nonmineral surveys made by the surveying service of the General Land Office or by United States deputy surveyors, after approval by the cadastral engineer in charge of the public survey office at Juneau, will be submitted to the Commissioner of the General Land Office for examination and acceptance.

The original plat will be transmitted to the General Land Office for photolithographing and that plat and the photolithographic copies will be disposed of as follows:

(*a*) The original plat will be returned to the public survey office for filing.

(*b*) One copy on drawing paper will be filed in the General Land Office.

(*c*) One copy on drawing paper will be transmitted to the proper district land office for filing.

(*d*) One copy will be furnished to the Division Inspector for Alaska for use in his office.

(*e*) One copy will be sent by the public survey office to the claimant for posting on the land.

The field notes will be written in triplicate and will be disposed of as follows:

(*a*) The original notes will be retained by the public survey office at Juneau for filing.

(*b*) The duplicate copy will be filed in the General Land Office.

(*c*) The triplicate copy will be sent to the district land office for necessary use, thereafter to be transmitted to the General Land Office as a part of the record in the case.

PLATS AND FIELD NOTES OF MINERAL SURVEYS

10. Plats of Alaskan mineral surveys will be released immediately upon their approval by the cadastral engineer in charge of the public survey office at Juneau, and in order to enable claimants to proceed with their applications for patents without delay two copies of each plat will be reproduced in the public survey office by photostat, blueprint, or in such other manner as may be made available, and furnished to the claimant or to his agent or attorney for immediate use, one for posting on the land and one for filing with the application.

The original plat will be transmitted to the General Land Office for photolithographing and that plat and the photolithographic copies will be disposed of as follows:

(*a*) The original plat will be returned to the public survey office for filing.

(*b*) One copy on drawing paper will be filed in the General Land Office.

(*c*) One copy on drawing paper will be transmitted to the proper district land office for filing.

(*d*) One copy will be furnished to the Division Inspector for Alaska for use in his office.

The field notes will be written in duplicate and will be disposed of as follows:

(*a*) The original notes will be kept by and filed in the public survey office.

(*b*) The duplicate copy will be sent to the claimant or to his agent or attorney for filing with the application.

PLATS SOLD

11. Photolithographic copies of plats, when available, will be sold at the rate of 50 cents each, and blue prints or other copies reproduced in the public survey office will be sold at cost.

SALE OF TIMBER FOR USE IN ALASKA AND FREE USE OF TIMBER IN THE TERRITORY

Section 11 of the act of May 14, 1898 (30 Stat. 414), authorizes the Secretary of the Interior (*a*) to sell timber to individuals, associations, and corporations, and (*b*) to permit the free use of timber by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes. The act has reference only to timber upon vacant, unreserved public lands, outside of the limits of national forests. The free-use privilege is not extended to associations and corporations.

Pursuant to the authority conferred upon him, the Secretary of the Interior has caused the following rules and regulations to be promulgated.

LIMITED FREE USE BY SETTLERS, ETC.

1. Persons designated in the last sentence of section 11, act of May 14, 1898, may go upon the vacant, unreserved public lands and take in amount not exceeding a total of 100,000 feet, board measure, or 200 cords, in any one calendar year, in saw logs, piling, cordwood, or other timber, the aggregate of either of which amount may be taken either in whole in any one of the above classes of timber or in part of one kind and in part another kind or in other kinds, and where a cord is the unit of measure it shall be estimated, in relation with saw timber, in the ratio of 500 feet, board measure, per cord. Where such persons are unable to take such timber in person, they may employ a servant or agent to procure the timber for them. The uses of the timber must be confined to the uses specified in the act. The taking of timber free of charge for sale and speculation is not authorized. Persons who desire to exercise the privileges extended to them in this section are not required to file applications as provided hereinafter, but in order that future complications may be avoided, they must notify the division inspector at Anchorage, Alaska, or the inspector in charge of timber investigations in the district in which the timber is to be cut, by registered letter, of their intention to procure timber under the free-use clause. Each applicant should set forth in his notice the kind and quantity of timber which is to be cut and the use for which it is to be cut and a description of the land on which said cutting is to be done by township and range and by section and sectional subdivisions thereof, if it be surveyed, or by natural objects by which it may be identified if it be unsurveyed. A blank form of notice (Form 4–023 f) has been prepared and may be obtained free of charge upon request from the division inspector or from the inspectors stationed in Alaska.

SALES OF TIMBER

2. Timber upon the vacant, unreserved public lands, outside of the limits of national forests, will be sold in such quantities as are actually needed and as will be used from year to year. Sales are not limited to residents of Alaska, but may be made to any individual, association, or corporation.

APPLICATIONS FOR PURCHASE—PLACE TO FILE—CONTENTS

3. Applicants to purchase timber must file with the register and receiver of the United States land office for the district wherein the lands to be cut over are situated applications in the form prescribed by the Commissioner of the General Land Office (Form 4–023). Blank forms may be obtained free of charge from the United States land offices at Anchorage, Fairbanks, and Nome, or from the inspectors of the Interior Department, or from the United States commissioners stationed in Alaska, or from the General Land Office, Washington, D. C. Every applicant should read carefully the printed statements and conditions in the application before attach-

ing signature thereto, since he will be held responsible for subscribing to statements as true which he knows or ought to know to be untrue. Before executing an application, an applicant should, if in doubt, ascertain that the lands from which he desires to cut timber are subject to the provisions of the act. The following information must be incorporated in every application in the blank spaces provided for the purpose:

(*a*) Name or names, post-office address, residence, and business occupation of the applicant or applicants who apply to purchase timber; (*b*) the amount in board feet, linear feet, or cord unit of measurement of timber it is desired to purchase; (*c*) the approximate area of the land on which the timber is located; (*d*) a description by legal subdivision, if surveyed, or by metes and bounds with reference to some permanent natural landmark, if unsurveyed, of the land from which the timber is desired to be cut; (*e*) the proposed use of the timber and the place where it is to be used; (*f*) the amount of money deposited with the application and the form; that is, whether in cash, certified check, or postal money order. Each application must be duly witnessed by two witnesses.

POSTING NOTICE ON THE LAND

4. After transmitting his application to the register and receiver, the applicant shall, before commencing to cut the timber applied for, post a notice (Form 4–023c), which will be furnished with the application, in some conspicuous place on the land from which the timber is proposed to be cut, describing the land and designating the amount and kind of timber that has been applied for and the date on or before which the cutting must be completed. Unless the timber is cut and prepared for removal within one year from the date of the filing of the application, all rights thereunder will be forfeited. The application contains a statement to the effect that this requirement will be fulfilled, and neglect on the part of the applicant to fulfill it will be deemed a sufficient ground for revocation of the right to cut and remove any timber under the application. The description in the notice should be identical with the description in the application. This requirement has been adopted in order that others who may desire to file applications to purchase timber or to enter the lands may have notice that the timber has been sold.

MINIMUM PRICE FOR WHICH TIMBER WILL BE SOLD—PAYMENTS

5. All timber will be sold hereunder at a reasonable stumpage value. The following rates have been fixed as the minimum rates for which the various kinds of timber will be sold: $1 per 1,000 feet b. m. for Sitka spruce, hemlock, and red cedar; $2.50 per 1,000 feet b. m. for yellow cedar; one-half cent per linear foot for piling 50 feet or less in length up to a top diameter of 7 inches; three-fourths cent per linear foot for piling between 50 and 80 feet in length up to a top diameter of 8 inches; 1 cent per linear foot for piling over 80 feet in length up to a top diameter of 8 inches; 50 cents per cord for shingle bolts and cooperage stock; 25 cents per cord for wood suitably only for fuel or mine lagging. A deposit in the sum of $50, in cash, postal money order, or certified check, where the stumpage value, at the minimum

rate, of the material applied for equals or exceeds that amount, or in a sum representing the full stumpage value, at the minimum rate, where such value is less than $50, must be made as an evidence of good faith at the time that the application is filed. If a permit shall afterwards be issued, the deposit will be applied to the purchase price of timber. If the issuance of a permit shall be denied and no timber shall have been cut under the application, the amount deposited by the applicant will be returned to him.

After an application is allowed the timber to be sold thereunder will be appraised by an inspector of the Interior Department, and after appraisal said inspector will collect the appraised amount in excess of the sum originally deposited, and give to the applicant a memorandum receipt for the payment, which receipt should be preserved by the applicant until he receives official receipt therefor. The inspector will deposit all such moneys with the proper register or receiver. Official receipts will be issued for all payments made by applicants. All postal money orders must be made payable to the order of the proper register or receiver and must be drawn on the post office where the district land office is located. Checks and bank drafts must be drawn so that they can be cashed without cost to the Government. Postal money orders, checks, and bank drafts are not to be considered as payment for timber until the same are converted into cash, but receipt for the payment will issue as provided in Circular No. 1008 (51 L. D. 148).

WHEN CUTTING AND REMOVAL MAY BEGIN

6. As soon as the applicant has filed his application with the receiver, made the requisite initial deposit, and posted notice on the land, he may begin to cut and prepare for removal the timber applied for. As soon as practicable after the filing of an application, a field investigation and appraisal will be made by an inspector of the Interior Department. After such investigation and appraisal shall have been made, and after the applicant has paid to the inspector the excess stumpage value, over and above the sum originally deposited, where there is such excess, the inspector will issue a permit (Form 4–023 b), unless he finds that a permit ought not be issued, authorizing the applicant to remove the timber. If for any reason the inspector is unable to make the investigation and appraisal within 60 days after the filing of an application, he will, if he knows of no objection, issue a permit (Form 4–023 b), and the applicant may then remove the timber, provided that he shall first transmit to the register and receiver the excess stumpage value over and above the sum originally deposited, where there is such excess.

LIMITATIONS UPON RIGHTS ACQUIRED UNDER PERMISSION TO CUT TIMBER

7. The permission to cut shall not give the applicant the exclusive right to cut timber from the lands embraced in his application as against any person entitled to the free use of timber under the provisions of the act, unless the area described in the application is limited to 40 acres and, if the lands be unsurveyed, the boundaries thereof are blazed or otherwise marked by him sufficiently to be identified. The cutting of immature timber will not be permitted

under these rules and regulations. The timber authorized to be cut under these rules and regulations must be cut and prepared for removal within one year from the date of the filing of the application. Sales of timber will not be authorized unless there is a necessity for the use of the timber within two years from the date of the authorization to cut.

LIMITATIONS WITH REFERENCE TO AREA—EXCEPTIONS

8. Withdrawals have been made for various purposes from time to time within the Territory of Alaska since its purchase by the United States. These rules and regulations are not applicable to the free use or purchase of timber upon such withdrawn areas, unless an exception be made in the order of withdrawal or it is evident from the spirit and intent of the withdrawal order that such exception was intended. By the act of March 4, 1915 (38 Stat. 1214), sections 16 and 36 in each township were granted to the Territory for school purposes and section 33 in each township in the Tanana Valley between parallels 64 and 65 degrees of north latitude, and between 145 and 152 degrees of west longitude, and sec. 6, T. 1 S., R. 1 W.; sec. 31, T. 1 N., R. 1 W.; sec. 1, T. 1 S., R. 2 W.; and sec. 36, T. 1 N., R. 2 W., Fairbanks meridian, were reserved in aid of the Territorial agricultural college and school of mines when established by the Territorial legislature. The timber upon lands reserved for educational purposes will not be subject to disposition hereunder. Alaskan withdrawal No. 1 and Alaska town-site withdrawals Nos. 1 to 9, inclusive, have been amended so as to permit of the use or purchase of timber within the area of those withdrawals, and the Executive orders establishing Alaskan timber reserve No. 1, pursuant to the act of March 12, 1914 (38 Stat. 305), expressly state that such timber as shall not be needed for the construction of Alaskan Government-owned railroads may be disposed of by the Secretary of the Interior. Persons who desire to use or purchase timber on lands within Alaskan timber reserve No. 1 should first inquire of The Alaska Railroad, Anchorage, Alaska, as to whether or not the particular timber which they desire is needed by that railroad, and in the event that said timber is not so needed, applications may be filed for the same in manner as hereinbefore provided. The information to be supplied by the applicant in the fulfillment of the requirements set forth in subdivision (*d*) section 3 of these rules and regulations should contain statements to the effect that the timber is upon lands within the timber reserve and that The Alaska Railroad will consent to its removal. In such cases applications must be filed irrespective of whether the timber is to be procured under the free-use clause or under the purchase clause of the act.

INDIAN AND ESKIMO CLAIMS AND ALLOTMENTS—HOMESTEAD AND MINING CLAIMS

9. All persons desiring to procure timber under these rules and regulations must ascertain whether or not the lands from which they desire to cut are embraced within any allotment approved to an Indian or Eskimo or within any pending application for such allotment, or are within the bona fide legal possession of or occupied by any Indian or Eskimo, and every timber application (Form 4–023)

contains a statement to the effect that the lands described in the application are not within such areas, and said statement must be subscribed to by the applicant and be duly witnessed by two witnesses. The cutting of timber on existing homestead, mining, or other claims is not authorized by these rules and regulations, but when a homestead, mining, or other claim shall have been initiated subsequent to the date of the filing of an application hereunder and posting of notice, as required by paragraph 4, such homestead, mining, or other claimant must take the claim, subject to the right of the timber applicant to cut and remove from the lands described in the application and notice the amount of timber purchased under the terms of the application.

FREE USE OF TIMBER FOR ARMY POSTS AND OTHER GOVERNMENTAL PURPOSES

10. Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized governmental purposes may procure such firewood or timber from the vacant unreserved public lands free of charge, provided that the contracts do not include any charge for the value of the firewood or timber. The filing of an application is not required, but it is advisable for contractors to file applications in order that future complications with reference to charge of trespass may be avoided; and when applications are filed, the terms of the contract agreement, the use to which the timber is to be put, and a statement to the effect that no charge is to be made for the stumpage value of the material should be incorporated therein; unless the contract with the Government specifically states that no stumpage has been charged, it will be presumed that a charge has been made and the contractor must pay stumpage for the wood.

PREVENTION AGAINST WASTE—PRECAUTION AGAINST FOREST FIRES

11. The cutting of timber under these rules and regulations shall be done in such a manner as to prevent unnecessary waste. All trees shall be utilized to as low a diameter in the tops as possible, and stumps shall be cut as close to the ground as conditions will permit. All brush, tops, lops, and other forest débris made in felling and removing the timber shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the inspector who has charge of the investigation. Every precaution shall be taken to prevent forest fires, and persons taking timber hereunder shall assist in suppressing such fires within the areas covered by their applications.

EXAMINATION BY INSPECTORS

12. At convenient times during cutting, or after any sale, the inspector will examine the lands cut over and submit a report or reports to the Commissioner of the General Land Office as to compliance with the terms of the sale, and if he finds that the cutting is being done in violation of the terms of sale he will immediately stop the cutting and report the matter for action. Special instructions have been issued for the guidance of the inspectors, who are to appraise timber and supervise its cutting and removal.

SALE OF TIMBER FOR EXPORTATION FROM ALASKA [j]

Authority for the exportation of timber from Alaska is contained in the act of April 12, 1926 (44 Stat. 242), and the following regulations are prescribed thereunder:

SMALL-QUANTITY SALES

1. Sales of timber to be cut for export may be made pursuant to the procedure and under the conditions set forth in the existing rules and regulations [41] where quantities are such as will be disposed of from year to year, and the purchases are made by those who do not contemplate large-scale production and an expenditure of large sums of money for developing enterprises for the exportation of such timber.

LARGE-QUANTITY SALES

2.[k] Sales of timber suitable for manufacturing purposes are hereby authorized in quantities, if found available, sufficient to supply a mill or proposed mill for a period of as much as 10 years, when it is satisfactorily shown that the purchaser in good faith intends to develop an enterprise for the cutting of this class of timber for export from Alaska and the sale does not endanger the supply of such timber for local use. The amount of timber that any one purchaser will be permitted to purchase under this provision and the period of the contract will be governed by the capacity of the mill and the estimated quantity that it will be capable of producing during the period covered by the contract of sale. When a 10 years' supply is sold the period within which the same must be cut (10 years) will begin to run from the time that the contract of sale is executed, if the manufacturing plant has been built, or from the time that the mill has been constructed and ready to begin operations if it is to be built, but in no case will more than two years be allowed for construction, and each contract shall contain a provision that all rights acquired thereunder shall be forfeited if operations have not been commenced within three years from the date of execution of the contract, unless, upon satisfactory showing the Secretary of the Interior, shall, in his discretion, excuse the delay. Commencement of operations in this sense will be construed as a bona fide commencement of actual cutting of timber in quantity sufficient to show that it is the purpose of the purchaser to fulfill the conditions of the contract and that it was not entered into merely for speculative purposes.

APPLICATIONS TO PURCHASE

3. Applications to purchase timber for export from Alaska pursuant to the foregoing act of Congress must be filed in duplicate in the United States land office for the district wherein the lands to be cut over are situated and should show: (*a*) Name, post-office address, residence, and business location of applicant; (*b*) amount or

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[41] See p. 256.

[j] The instructions under this heading are based on Circular No. 1092, not carried in this publication. The forms contained in Circular No. 1092 have not been reproduced herein. The instructions have been amended by Circulars Nos. 1184, p. 279 and 1198, p. 282.

[k] See amendment, p. 282.

approximate amount of board feet of timber that the applicant desires to purchase; (*c*) a description by legal subdivision or subdivisions, if surveyed, or by metes and bounds with reference to some permanent natural landmark, if unsurveyed, and the area or approximate area of the land from which the timber is to be cut, and if the lands are within the area (Alaskan Timber Reserves) withdrawn pursuant to the act of March 12, 1914 (38 Stat. 305), in aid of the construction of the Alaskan Government-owned railroads it should be so stated, and evidence of consent previously obtained from The Alaska Railroad should be filed with the application; (*d*) whether or not the applicant is prepared to commence cutting immediately, and if not, approximately how long before timber cutting operations will be commenced; (*e*) [42] the estimated annual capacity of the mill or proposed mill, and the amount of money invested or to be invested in the establishment of the enterprise, accompanied by evidence as to the financial standing of the applicant, and a statement showing the general plan of operation and the purpose for which the timber is to be used. The sum of $200 must be deposited with each application as an evidence of good faith and for the purpose of helping to defray the cost of appraisal. If the sale is consummated, the amount of the deposit will be credited on the purchase price without deduction for the cost of appraisal.

PUBLICATION AND POSTING—MARKING OF LAND

4. Immediately upon the filing of an application to purchase timber under section 2 of these rules and regulations a notice shall be published at the expense of the applicant in a newspaper designated by the register, published in the vicinity of the land from which the timber is to be cut and most likely to give notice to the general public once a week for a period of five consecutive weeks, if in a weekly paper, or if a daily paper for a period of 30 days.[l] The description of the land in the notice must be identical with the description in the application. The register and receiver will post a copy of said notice in a conspicuous place in their office during the period of publication. Upon the execution of a contract, the purchaser shall, if the lands from which the timber is to be cut are unsurveyed, cause the boundaries to be blazed or otherwise marked in order that they may be identified. This requirement has been adopted in order that others who may subsequently desire to purchase timber or to settle upon or enter the land may have notice that the timber has been applied for.

ACTION ON APPLICATION

5.[m] The district officers will make appropriate notations upon the records of their office and transmit the application to the Commissioner of the General Land Office, and at the same time transmit the duplicate to the Division Inspector at Anchorage, Alaska, or to an inspector located in the particular land district who shall have been designated by the Division Inspector to make appraisals. Upon receipt of the same the latter will without delay cause the timber applied for to be examined and appraised. The appraisal rates will be based upon a fair stumpage rate taking into consideration the quality of the timber and its accessibility to market. In no event will any timber suitable for manufacturing purposes be appraised at less than $1 per thousand feet, board measure. After an examination and appraisal has been made the Division Inspector will at once submit his report and recommendation to the Commissioner of the General Land Office, together with a statement of facts showing whether such sale would endanger the supply of timber for local use. The Government reserves the right to reappraise the remaining standing timber at the expiration of five years from the date of commencement of the timber cutting period as set forth in paragraph 2 hereof, but in no instance shall the appraisal be at more than double the rate of the original appraisal.

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[42] See amendment, p. 279.

[l] See instructions of Oct. 19, 1929, p. 1149.

[m] See amendment, p. 283.

EXECUTION OF CONTRACT—BOND REQUIRED

6. Upon receipt of a report that such sale appears warranted the Commissioner of the General Land Office will notify the applicant of the result of the appraisal and advise him that he will be allowed 30 days from receipt of such notice within which to enter into a contract with the Government through the Commissioner of the General Land Office as its agent, subject to the approval of the Secretary of the Interior, to purchase the timber applied for pursuant to the rules and regulations of the Department pertaining thereto, and shall execute and file therewith a bond in a sum equal to 50 per cent of the stumpage value of the estimated amount of timber to be cut during each year of the contract. The said bond to have as surety a bonding company shown on an approved list issued by the Treasury Department, and shall be conditioned on the payment for the timber in accordance with the terms of the contract and to the faithful performance of the contract in other respects and to observance of the rules and regulations pursuant to which the sale is made. Forms of contract and bond to be used hereunder are printed as a part of Circular No. 1092.[n] All contracts and bonds executed hereunder must be approved by the Secretary of the Interior.

PROVISIONS TO BE INSERTED IN CONTRACT

7.[o] All contracts shall contain provisions against waste and precaution against forest fires. The Government may reserve the right to insert in a contract a provision authorizing the disposition for local use of timber that is not suitable for manufacturing purposes upon the area described in the contract, to another or others pursuant to the provisions set forth in sections 1 and 2, page 257 hereof. Contracts entered into under these rules and regulations will also be subject to the right of qualified persons to settle upon or enter the lands under the provisions of the homestead laws, but such settlers or homesteaders shall not have any title to or interest in the timber purchased under the contract or be permitted to interfere with the purchaser's operations incident to the cutting and removal of the timber.

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[n] See footnote j, p. 262.

[o] See amendment, p. 283.

RENEWALS OF CONTRACT

8.[p] At the expiration of a contract a new contract may be entered into for a period of five years, upon the approval of the Secretary of the Interior, where there is sufficient timber available to warrant it. Prior good faith of the purchaser and substantial compliance with the conditions of the expired contract will be given consideration with reference to awarding a new contract. A new appraisal shall be made at that time for the purpose of fixing the stumpage price. Further renewals for five-year periods may be made to the same purchaser upon approval of the Secretary of the Interior.

LANDS FROM WHICH TIMBER MAY NOT BE SOLD

9. These rules and regulations are not applicable to timber on national forests, Indian or Eskimo claims, or lands otherwise appropriated, reserved, or withdrawn, for any purpose, except where the terms of the reservation or withdrawal order permit.[43]

Free Use of Timber by Oil and Gas Claimants

The free use of timber upon oil and gas prospecting permits and leases by permittees and lessees, authorized by the Secretary of the Interior under authority of section 32 of the act of February 25, 1920 (41 Stat. 437), is governed by Circular No. 1048.

Sale of Dead, Down, or Damaged Timber

The sale of dead or down timber or timber killed or seriously damaged by forest fires, authorized by the act of July 3, 1926 (44 Stat. 890), which amended the act of March 4, 1913 (37 Stat. 1015), is governed by Circular No. 1093, as amended by Circular No. 1112.

Town Sites Entered by Trustee

The entry of public lands in Alaska for town-site purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, authorized by the act of March 3, 1891 (26 Stat. 1095, 1099), will be governed by the following regulations:

SURVEY OF EXTERIOR LINES

1. If the land is unsurveyed the occupants must, by application to the public survey office, obtain a survey of the exterior lines of the town site which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the town site any lands set aside by the district court under section 31 of the act of June 6, 1900 (31 Stat. 321, 332), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

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[p] See amendment, p. 283.

[43] See p. 260, par. 8, and p. 283, par. 9. The administration of the forest reserves was transferred to the Secretary of Agriculture by the act of Feb. 1, 1905 (33 Stat. 628).

APPOINTMENT OF TRUSTEE

2. When the survey of the exterior lines has been approved, or if the town site is on surveyed land, a petition to the Secretary of the Interior, signed by a majority of the occupants of the land, will be filed in the district office for transmittal to the General Land Office requesting the appointment of trustee and the survey of the town site into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots occupied and improved on the date of the approval of final subdivisional town-site survey.

PAYMENT REQUIRED—AREA ENTERABLE

3. If the petition be found sufficient, the Secretary of the Interior will designate an inspector of the Interior Department as a trustee to make entry of the town site, payment for which must be made at the rate of $1.25 per acre. If there are less than 100 inhabitants the area of the town site is limited to 160 acres; if 100 and less than 200, to 320 acres; if more than 200, to 640 acres, this being the maximum area allowed by the statute.

FILING OF APPLICATION—PUBLICATION AND POSTING—SUBMISSION OF PROOF

4. The trustee will file his application and notice of intention to make proof, and thereupon the register will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the town site does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initiated under Russian rule.

MONEYS TO BE ADVANCED BY LOT OCCUPANTS

5. The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry, to be refunded to them when realized from lot assessments.

CONTESTS AND PROTESTS

6. Applications for entry will be subject to contest or protest as in other cases.

SUBDIVISION OF LAND

7. After the entry is made the town site will be subdivided by a United States deputy surveyor into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments when collected.

STATUS OF INDIAN OCCUPANTS

8. Indian or native Alaskan occupants who have secured certificates of citizenship under the Territorial laws of Alaska shall be

treated in all respects like white citizen occupants; but all land occupied by other Indians or Alaskan natives shall not be assessed by the trustee.

LOT ASSESSMENTS

9. The trustee will make a valuation of each occupied or improved lot in the town site, and thereupon assess upon such lots and blocks according to their value such rate and sum as will be necessary to pay all expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of said act of Congress and these instructions.

PUBLICATION OF NOTICE TO LOT OCCUPANTS

10. On the acceptance of the plat by the General Land Office the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional town-site survey, or their assigns thereafter, are entitled to the allotments herein provided. Minority and coverture are not disabilities.

APPLICATIONS FOR DEEDS

11. Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be verified by their affidavits and corroborated by two witnesses. Such affidavits may be subscribed and sworn to before any officer authorized to administer oaths.

ISSUANCE OF DEEDS—PROCEDURE ON CONFLICTING APPLICATIONS

12. Upon receipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots the trustee, if he considers it necessary, may order a hearing, to be conducted in accordance with the rules of practice. No deed will be issued for any lot involved in a contest until the case has been finally closed. Appeals from any decision of the trustee or from decisions of the General Land Office may be taken in the manner provided by the rules of practice.

PUBLIC SALE OF UNCLAIMED LOTS

13. After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional town-site survey, and all lots and tracts claimed and awarded on which the assessments have not

been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional town-site survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot, and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published for 30 days prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the town site. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

FINAL REPORT OF TRUSTEE—DISPOSITION OF UNEXPENDED MONEYS

14. Immediately after the public sale the trustee will make and transmit to the General Land Office his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated, such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved.

RECORDS TO BE KEPT BY TRUSTEE

15. The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

DISPOSITION OF RECORDS ON COMPLETION OF TRUST

16. The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as hereinbefore provided, with all papers, other books, and everything pertaining to such town site in his possession and all evidence of his official acts shall be transmitted to the General Land Office to become a part of the records thereof, excepting from such papers, however, in case the town is incorporated, the subdivisional plat of the town site, which he will deliver to the municipal authorities of the town, together with a copy of the town site tract book or books, taking a receipt therefor to be transmitted to the General Land Office.

Town Sites Reserved By the President

Town sites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381, United States Revised Statutes, and in the instructions under said sections contained in Circular No. 1122, approved April 27, 1927 (52 L. D. 106).

Indian Possessions in Trustee Towns—Native Towns [v]

The act of May 25, 1926 (44 Stat. 629), provides for the town-site survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee town sites in Alaska who have not secured certificates of citizenship under the laws of Alaska and for the survey and disposal of the lands occupied as native towns or villages, and section 4 of the act authorizes the Secretary of the Interior to prescribe appropriate regulations. Accordingly, the following regulations are issued:

DIVISION INSPECTOR TO ACT AS TRUSTEE IN ESTABLISHED TOWNS

1. As to trustee town sites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1095), and for which the town-site trustee has heretofore closed his accounts and been discharged as trustee, the division inspector for Alaska, whose address is now Anchorage, Alaska, is hereby appointed town-site trustee and authorized to perform all necessary acts and to administer the necessary trusts in connection with the act of May 25, 1926.

As to other trustee town sites in Alaska, the division inspector for Alaska is now the duly appointed and acting town-site trustee, and for such towns he will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926, in addition to his other duties as trustee.

SURVEY AND DISPOSAL OF INDIAN OR ESKIMO POSSESSIONS

2. Where the matter of surveying and disposing of Indian or Eskimo possessions in trustee town sites is hereafter taken up for consideration the town-site trustee will submit a report to the Commissioner of the General Land Office showing whether or not it would be of interest to the Indian or Eskimo occupants of the land to extend the established streets and alleys of the town site upon and across the tract and whether or not subdivisional surveys should be made. The report will be examined and considered by the Commissioner of the General Land Office, and he will transmit it to the Secretary of the Interior with such recommendation as he may deem appropriate.

Before directing the survey and disposal of such Indian or Eskimo possessions under authority of the act of May 25, 1926, the Secretary of the Interior will determine whether or not the patent which issued for the townsite tract includes the tract designated as "Indian possessions." If it does not, a supplemental patent will be issued, to accompany the departmental order for survey and disposal.

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[v] The instructions under this heading are based in part on Circular No. 1082, not carried in this publication.

SALE OF LAND FOR WHICH RESTRICTED DEED HAS ISSUED

3. If the parties to a proposed sale involving land for which a restricted deed has been issued under authority of the act of May 25, 1926, wish to have the sale approved by the Secretary of the Interior, the facts should first be submitted to the division inspector. Upon receiving information regarding any proposed sale, the division inspector, in his capacity as trustee, will make such investigation as he deems proper, and he will submit a report to the Commissioner of the General Land Office as to the advisability of approving the proposed sale. The report will be examined by the Commissioner and he will transmit it to the Secretary of the Interior with appropriate recommendation.

NATIVE TOWNS

4. The division inspector for Alaska is also hereby designated as trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926, and as such trustee he will take such action as may be necessary to accomplish the objects sought to be accomplished by that section. In any case in which he thinks it would be of advantage to the Indian or Eskimo occupants to have the lands occupied and claimed by them surveyed as town or village, he should bring the matter to the attention of the Commissioner of the General Land Office with appropriate recommendation.

PAYMENT—PUBLICATION—PROOF FOR NATIVE TOWNS

5. In connection with the entry of lands as a native town or village. under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee town sites will not be required.

PROVISIONS TO BE INSERTED IN RESTRICTED DEEDS

6. The town-site trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed should provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts, or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the town site have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed should further provide that the approval by the Secretary of the Interior of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

NATIVE TOWNS OCCUPIED PARTLY BY WHITE LOT OCCUPANTS

7. Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act

of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

In each case of this kind the division inspector for Alaska will report the facts to the Commissioner of the General Land Office, showing the name and location of the town, the number of Indian or Eskimo lot occupants and the number of white lot occupants, the amount of land used or claimed by each and the approximate periods for which it has been used or claimed, the value of the improvements on the lands and by whom owned, and such other facts as he may deem appropriate.

Upon receipt of such report special instructions will be issued as to the procedure which should be followed with respect to the survey, entry, and disposal of the lands, assessment of costs, etc.

FORMS

8. The following forms have been issued for use in connection with the foregoing regulations: (*a*) Application for deed by native Indian or Eskimo of Alaska, Form 4–231; (*b*) trustee's deed to native Indian or Eskimo of Alaska, Form 4–232; and (*c*) deed of native Indian or Eskimo of Alaska, Form 4–232 a.

Town Sites Along the Alaska Railroad

Executive Order[r]

ALASKAN RAILROAD TOWN-SITE REGULATIONS

Under and pursuant to the provisions of the act of Congress approved March 12, 1914 (38 Stat. 305), entitled "An act to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska, and for other purposes," it is hereby ordered that the administration of that portion of said act relating to the withdrawal, location, and disposition of town sites shall be in accordance with the following regulations and provisions, to wit:

RESERVATIONS

The Alaskan Engineering Commission will file with the Secretary of the Interior, when deemed necessary, its recommendations for the reservation of such areas as in its opinion may be needed for town-site purposes. The Secretary of the Interior will thereupon transmit such recommendations to the President with his objections thereto or concurrence therewith. If approved by the President, the reservation will be made by Executive order.

SURVEY

When in the opinion of the Secretary of the Interior the public interests require a survey of any such reservation, he shall cause to be set aside such portions thereof for railroad purposes as may be selected by the Alaskan Engineering Commission, and cause the remainder, or any part thereof, to be surveyed into urban or suburban blocks and lots of suitable size, and into reservations for parks, schools, and other public purposes and for Government use. Highways should be laid out, where practicable, along all shore lines, and sufficient land for docks and wharf purposes along such shore lines should be reserved in such places as there is any apparent necessity therefor. The survey will be made under the supervision of the Commissioner of the General Land Office, and the plats will be approved by him and by the chairman of the Alaskan Engineering Commission.

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[r] Amended by Executive Order of June 12, 1929 (No. 5136), p. 282.

PREFERENCE RIGHT

Any person residing in a reserved town site at the time of the subdivisional survey thereof in the field and owning and having valuable and permanent improvements thereon, may, in the discretion of the Secretary of the Interior, be granted a preference right of entry, of not exceeding two lots on which he may have such improvements by paying the appraised price fixed by the superintendent of sale, under such regulations as the Secretary of the Interior may prescribe. Preference right, proof, and entry, when granted, must be made prior to the date of the public sale.

PUBLIC SALE

The unreserved and unsold lots will be offered at public outcry to the highest bidder at such time and place, and after such publication of notice, if any, as the Secretary of the Interior may direct, and he may appoint or detail some suitable person as superintendent of sale to supervise the same and may fix his compensation and require him to give sufficient bond.

SUPERINTENDENT'S AUTHORITY

Under the supervision of the Secretary of the Interior, the superintendent of the sale will be, and he is hereby, authorized to make all appraisements of lots and at any time to reappraise any lot which in his judgment is not appraised at the proper amount, or to fix a minimum price for any lot below which it may not be sold, and he may adjourn, or postpone, the sale of any lots to such time and place as he may deem proper.

MANNER AND TERMS OF PUBLIC SALE

The Secretary of the Interior shall by regulations prescribe the manner of conducting the public sale, the terms thereof, and forms therefor, and he may prescribe what failures in payment will subject the bidder or purchaser to a forfeiture of his bid or right to the lot claimed and money paid thereon. The superintendent of sale will at the completion of the public sale deposit with the receiver of the proper local land office the money received and file with its officers the papers deposited with him by said bidder, together with his certificate as to successful bidder.

If it be deemed advisable, the Commissioner of the General Land Office may direct the receiver of public moneys of the proper district to attend sales herein provided for, in which event the cash payment required shall be paid to the said receiver.

ANCHORAGE, MATANUSKA, AND NENANA TOWN SITES

Unsold and forfeited lands in the town sites of Anchorage, Matanuska, and Nenana, upon which assessments for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection have been levied by the Alaskan Engineering Commission and the assessments or any portion thereof remain unpaid shall be subject to such unpaid assessments and the purchaser shall pay the same in the manner the Secretary of the Interior may by regulations provide, and the proceeds of such assessments will be deposited with the Alaskan Engineering Commission, as a reimbursement to the operating expense fund as provided in section 3 of the act of March 12, 1914 (38 Stat. 305). See 22 Comp. Dec. 604. Hereafter no such assessments by said commission will be levied.

In cases where one of a number of joint purchasers of a lot has made or may hereafter make all payments of his pro rata share of the purchase price and assessments on the lot, such lot may, in the event of forfeiture being declared, and in the discretion of the Secretary of the Interior, be resubdivided and a preference right of purchase given to the person who has made all payments on his portion thereof, such preference right to be confined to the portion of the original lot held and claimed by such person. This privilege may be extended to a transferee of an original purchase.

Final certificate may issue in these town sites in all cases, when the purchase price and assessments are paid in full without regard to date of purchase.

COMMISSION BUILDING ON LOTS

Buildings belonging to the Alaskan Engineering Commission situated on a lot in any town site may be appraised and sold separate and apart from the lot on which located, under regulations provided by the Secretary of the Interior for the same and for the removal of the buildings. The proceeds for the sale of such buildings shall be paid to the Alaskan Engineering Commission as a reimbursement to its operating account.

PRIVATE ENTRY

Lots offered at public sale and not sold and lots offered and declared forfeited in a town site may, in the discretion of the Secretary of the Interior, be sold at private entry for the appraised price.

ORDERS REVOKED

All Executive orders heretofore issued for the disposition of town sites along the Government railroads in Alaska are hereby revoked so far as they conflict with the foregoing provisions. This order is intended to take the place of all other orders making provisions for the sale and disposal of lots in said town sites along Government railroads in Alaska under the provisions of said act.

WARREN G. HARDING.

THE WHITE HOUSE,
June 10, 1921.

(No. 3489)

NOTE.—The designation of the "Alaskan Engineering Commission" has been changed to "The Alaska Railroad." All matters which formerly were under the control of the chairman of said commission are now under the supervision of the general manager of the said railroad.

EXECUTIVE ORDER

AMENDING ALASKAN RAILROAD TOWN-SITE REGULATIONS

Under and pursuant to the provisions of the act of Congress, approved March 12, 1914 (38 Stat. 305), it is ordered that Executive Order No. 3489, issued June 10, 1921, be, and the same is hereby, amended to authorize and empower the Alaskan Engineering Commission to levy and collect assessments for town-site expenses for the town site of Nenana, for the improvements of streets, sidewalks, alleys, and for promotion of sanitation and fire protection, for the period from July 1, 1920, to August 31, 1921.

WARREN G. HARDING.

THE WHITE HOUSE,
August 9, 1921.

(No. 3529)

TRADE AND MANUFACTURING SITES

1. Section 10 of the act of May 14, 1898 (30 Stat. 413), authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land as a trade and manufacturing site.

EXECUTION OF APPLICATION

2. Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper district land office. It must be sworn to by the applicant and must be corroborated by the affidavits of two persons. It may be executed before any officer authorized to administer oaths in homestead cases in Alaska.[44]

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[44] See p. 209, par. 7.

QUALIFICATIONS OF APPLICANT

3. An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

DESCRIPTION OF LAND IN APPLICATION

4. If the land be surveyed, it must be described in the application according to legal subdivisions of the public-land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without survey.

FORM OF ENTRY

5. Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

FACTS WHICH MUST BE SHOWN IN APPLICATION

6. The application to enter must show:

(1) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry, when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business can not be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413).

(2) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(3) That the land does not abut more than 80 rods of navigable water.

(4) That the land is not within a distance of 80 rods along any such water from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation.[45]

(5) That the land is not included within an area which is reserved because of springs or water holes thereon. All facts relative to

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[45] See p. 244.

medicinal or other springs or water holes must be stated, as set forth in paragraph 3 under the heading "Springs and Water Holes."[46]

(6) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of the location no part of the land was claimed under the mining laws.

ACTION ON APPLICATION—REPORT OF DIVISION INSPECTOR

7. Upon receipt of the application, the register and receiver will note its filing, assign a current serial number thereto and transmit the original copy, unallowed, together with the accompanying papers, to the General Land Office. They will forward the duplicate copy of the application to the division inspector for report. With each copy they will report the status of the land as shown by their records.

The report of the division inspector will be made to the General Land Office and it should show whether the lands contain valuable deposits of coal, oil, gas, or other minerals, whether they have power or reservoir possibilities, whether they are within an area which is reserved because of hot, medicinal, or other springs, or water holes, and any other facts deemed appropriate.

APPLICATION FOR SURVEY

8. If the land applied for be unsurveyed and no objection to its survey is known to the register and receiver, they will furnish the applicant with a certificate to the cadastral engineer in charge of the public survey office stating the facts, and, after receiving such certificate, the applicant may make application to the public survey office for the survey of the land. The register and receiver will advise the public survey office of the issuance of the certificate, and, unless the applicant promptly makes application for the survey, the public survey office will report the facts to the General Land Office for such action as may be deemed proper.

SURVEY—PUBLICATION AND POSTING—ADVERSE CLAIMS—PROOF OF PUBLICATION AND POSTING

9. The instructions given under the above headings in connection with applications for soldiers' additional homestead entries will be followed in connection with trade and manufacturing sites.[47]

ALLOWANCE OF ENTRY AND ISSUANCE OF FINAL CERTIFICATE

10. The application and proofs filed therewith, and the report of the division inspector thereon, will be carefully examined in the General Land Office, and, if all be found regular, the register will be instructed to allow the application and to issue final certificate thereunder, upon payment for the land being made at the rate of $2.50 per acre, and in the absence of objections shown by his records.

HOMESTEADS OR HEADQUARTERS[s]

1. The act of March 3, 1927 (44 Stat. 1364), authorizes the sale as a homestead or headquarters of not to exceed 5 acres of unreserved

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[46] See p. 253.

[47] See pp. 250 and 251.

[s] The instructions under this heading are based on Circular No. 1121, not carried in this publication.

public lands in Alaska, not including mineral, coal, oil or gas lands, at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, associations of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska.

PURPOSE OF STATUTE

2. The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the Territory, not exceeding five acres, as homesteads or headquarters.

USE OF LANDS

3. Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

APPLICATIONS

4. Applications under said act must be filed in duplicate in the district land office within which the land is situated.

Each application must be sworn to by the applicant and must be corroborated by the affidavits of two witnesses, and must show the following facts:

(1) The age and citizenship of applicant.

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(3) The date when the land was first occupied as a homestead or headquarters.

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation, is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(6) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements made by or in possession of another person, association, or corporation.

(7) That the land is not within a distance of 80 rods along any navigable water from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation.[48]

(8) That the land is not included within an area which is reserved because of springs or water holes thereon. All facts as to medicinal

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[48] See p. 244.

or other springs or water holes must be stated, as set forth in paragraph 3 under the heading "Springs and Water Holes."[46]

(9) That no part of the land is valuable for coal, oil, gas, or other valuable mineral deposits and that at the date of location no part of the land was claimed under the mining laws.

OTHER REQUIREMENTS

5. In the matter of procedure, applications for homesteads or headquarters will be governed by the instructions given under the heading "Trade and Manufacturing Sites."[49]

WATER-POWER LANDS

Applications for other than power purposes which conflict in whole or in part with lands reserved or classified as power sites, or covered by power applications under the act of June 10, 1920 (41 Stat. 1063), known as "The Federal Water Power Act," will be acted upon and disposed of in accordance with instructions under section 24 of the act contained in Circular No. 729 (47 L. D. 595).

THOS. C. HAVELL,
Acting Commissioner.

Approved.

E. C. FINNEY,
First Assistant Secretary.

(Acts omitted.)

CIRCULAR NO. 1181

METES AND BOUNDS DESCRIPTION OF LAND TO BE OMITTED IN PROOF NOTICES FOR CERTAIN CLAIMS IN ALASKA.—CIRCULAR NO. 491 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 19, 1929.

Registers and Receivers, Anchorage, Fairbanks, and Nome, Alaska.

SIRS: The requirements with reference to publication of proof notices in homestead cases in Alaska, where a special survey has been made, are set forth in paragraph 25, page 33, of Circular No. 491, approved February 24, 1928.[50] The requirements of the law with reference to publication are contained in section 10 of the act of May 14, 1898 (30 Stat. 409, 414). These requirements are applicable to homestead entries, soldiers' additional entries, and trade and manufacturing sites.

In Alaska, in the classes of entries mentioned, the important feature of proof notices is to inform all interested parties of the geographical location of the land, and the information should be given in such a way that the people who read the notice will be able to interpret it properly. The metes and bounds description is technical, and not generally understood. Hence, in these cases, it is not of much value to the general public as a means of identification of land. The metes and bounds description adds to the length of the notice and to the cost of the notice to the claimant. The statute does not require the inclusion of such description in the published notice.

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[46] See p. 253.

[49] See pp. 273 to 275, inclusive, pars. 2, 4, 5, 7, 8, 9, and 10.

[50] The reference is to paragraph 25, page 33 of Circular No. 491 as issued in pamphlet form, reproduced on p. 214 hereof.

Adverse claimants may inform themselves as to the exact location of the land by the markings on the ground or from a copy of a plat of survey which must be filed in the district land office and posted on the land.

It is believed, therefore, that in the cases mentioned, and for the reasons stated, the inclusion of the metes and bounds descriptions in the published notices is objectionable and unnecessary. It is directed, therefore, that hereafter such descriptions be omitted.

In the cases referred to, as a means of identification of the land, the register will cause each notice hereafter issued to give the survey number and area of the claim, with a statement as to the general location of the land. If the survey is not tied to a corner of the rectangular system of the public-land surveys the notice should give the name and number of the location monument to which some corner of the survey is tied, and the course and distance from the location monument to such corner, with approximate latitude and longitude. If the survey is tied to a corner of the rectangular system of the public-land surveys, such corner should be identified by section, township, and range. The statement as to general location will identify the land as shown on the plat of survey or otherwise as the register may deem best. The statement, where possible, should refer to the land in connection with some well-known topographical point or natural object or monument, river, trail, town, mining camp, etc.

Circular No. 491 is hereby amended to agree with the above instructions.

Very respectfully,

William Spry, *Commissioner.*

Approved February 19, 1929.

E. C. Finney,
First Assistant Secretary.

Circular No. 1183

AMENDING CIRCULARS NOS. 491 AND 1108

Department of the Interior,
General Land Office,
Washington, March 19, 1929.

Register and Chief of Field Division, Anchorage, Alaska; Register and Receiver, Fairbanks and Nome, Alaska.

Gentlemen: The regulations governing fur farming in Alaska, issued in pursuance of the act of July 3, 1926 (44 Stat. 821), on January 22, 1927, and amended January 30, 1928, as set forth on pages 17, 18, and 19 of Circular No. 491,[51] approved February 24, 1928, and in Circular No. 1108, are hereby further amended by inserting after:

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[51] The pages referred to are pages in Circular No. 491 as issued in pamphlet form, reproduced on pages 201, 202, and 203 hereof. See footnote, p. 201.

Applications should cover, in substance, the following points, and be under oath:

(a) Applicant's name and post-office address.

the following:

(1) Married or single person.

(2) If married, whether the husband or wife of applicant, as the case may be, is the holder of a lease under said act, or has an application pending.

(3) If both husband and wife are applicants, proof must be furnished that each is acting solely on his or her separate account and not under any agreement or understanding with the other for joint operation.

Very respectfully,

William Spry, *Commissioner*.

Approved March 19, 1929.

John H. Edwards,
Assistant Secretary.

Circular No. 1184

AMENDING CIRCULAR NO. 1092, REGULATIONS PERMITTING THE EXPORTATION OF TIMBER FROM ALASKA[52]

Department of the Interior,
General Land Office,
Washington, March 20, 1929.

Circular No. 1092 of August 27, 1926, is hereby amended by substituting for provision (e) of paragraph 3 thereof, the following:

(e) The estimated annual capacity of the mill or proposed mill, and the amount of money invested or to be invested in the establishment of the enterprise, accompanied by evidence as to the financial standing of the applicant and a statement showing the general plan of operation and the purpose for which the timber is to be used. A minimum sum of $200 must be deposited with each application, as an evidence of good faith and for the purpose of helping to defray the cost of appraisal. The sum of such deposit may be increased when, in the opinion of the Secretary of the Interior, the interests of the Government require that a larger amount be deposited. If the sale is consummated, the amount of the deposit will be credited on the purchase price without deduction for the cost of appraisal. All remittances must be in cash or by certified check or postal money order.

William Spry, *Commissioner*.

Approved March 20, 1929.

John H. Edwards, *Assistant Secretary*.

GRANT TO ALASKA FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES

Department of the Interior,
General Land Office,
Washington, June 11, 1929.

Register, Anchorage, Alaska; Registers and Receivers, Fairbanks and Nome, Alaska.

Gentlemen: By the act of Congress approved January 21, 1929 (45 Stat. 1091), it is provided as follows:

That in addition to the provision made by the Act of Congress approved March 4, 1915 (Thirty-eighth Statutes at Large, page 1214), for the use and benefit of the Agricultural College and School of Mines, there is hereby granted to the Territory of Alaska, for the exclusive use and benefit of the Agricultural College and School of Mines, one hundred thousand acres of vacant nonmineral surveyed unreserved public lands in the Territory of Alaska, to be selected, under the direction and subject to the approval of the Secretary of the Interior, by the Territory, and subject to the following conditions and limitations:

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[52] See footnote j, p. 262.

SEC. 2. That the college and school provided for in this Act shall forever remain under the exclusive control of the said Territory, and no part of the proceeds arising from the sale or disposal of any lands granted herein shall be used for the support of any sectarian or denominational college or school.

SEC. 3. That it is hereby declared that all lands hereby granted to said Territory are hereby expressly transferred and confirmed to the said Territory and shall be by the said Territory held in trust, to be disposed of, in whole or in part, only in the manner herein provided and for the objects specified in the granting provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. Disposition of any of said lands or of any money or thing of value directly or indirectly derived therefrom for any object other than that for which such particular lands or the lands from which such money or thing of value shall have been derived or granted or in any manner contrary to the provisions of this Act shall be deemed a breach of trust.

SEC. 4. That no mortgage or other encumbrance of said lands shall be valid in favor of any person for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest bidder at public auction, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of the transaction to be had, with full description of the lands to be offered, published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the capital and in a newspaper of like circulation which shall then be regularly published nearest to the location of the lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice thus provided for sales and leases of the lands themselves: Provided, That nothing herein contained shall prevent said Territory from leasing any of said lands referred to in this section for a term of five years or less without such advertisement herein required.

Sec. 5. That all lands, leasehold, timber, and other products of the land before being offered shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor, in case of the sale of the land, less than a minimum price of $5 per acre; nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid.

Sec. 6. That a fund shall be established in the Territorial treasury to carry out the purposes of this Act, and whenever any money shall be in any manner derived from any of the land granted same shall be deposited in the Territorial treasury in the fund. The Territorial treasurer shall keep all such money invested in safe interest-bearing securities, which securities shall be approved by the governor and the secretary of state of the Territory, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto, as defined by this Act and the laws of the Territory not in conflict herewith. The income from said fund may and shall be used exclusively for the purposes of such Agricultural College and School of Mines: Provided, That no portion of said income shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.

Sec. 7. That every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed or the use thereof of the natural products thereof, not made in substantial conformity with the provisions of this Act, shall be null and void. It shall be the duty of the Attorney General of the United States to prosecute in the name of the United States and in its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom."

Applications to select lands under this grant will be made by the proper selecting agent of the Territory and will be filed in the local land office of the district in which such selected lands are situated. Such selections must be made in accordance with the law, and with the regulations governing the selections of lands by States and Territories, approved June 23, 1910 (39 L. D. 39), as applying to "special grants" or "grants in quantity."

Each list of selections must contain a reference to this act under which the selections are made and must be accompanied by a certificate of the selecting agent showing the selections are made under and pursuant to the laws of the Territory of Alaska.

The selections in any one list should not exceed 6,400 acres. No more than one serial number must be given to any list of selections, notwithstanding it may contain more than one selection.

Each list must be accompanied by a certificate of the selecting agent showing that the selections therein and those pending, together with those approved, do not exceed the total amount granted for the purpose stated.

The nonmineral character of the land applied for must be shown by an affidavit of some responsible party, having and testifying to a personal knowledge of the land, based upon examination made not more than three months prior to the filing of the list, and shall apply to each smallest legal subdivision of land selected. This affidavit should also show that the land is not occupied by nor does it contain improvements placed thereon by any Indian.

Every application list must be accompanied by a duly corroborated affidavit making the following showing as to the lands sought to be selected:

(1) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; that no part of the land is valuable for coal, oil, gas or other mineral deposits, and that at the date of the application no part of the land was claimed under the mining laws.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived; and that it is not within a distance of 80 rods along any navigable or other waters from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Inian or Eskimo allotment or Territorial selection, or that it has been restored from reservation.

(3) All facts relative to medicinal or hot springs upon the land must be stated. The facts as to all waters upon the land other than springs and water holes, whether creek, pond, lagoon or lake, their source, depth, width, outlet and current (whether swift or sluggish), whether or not the same or any of them are navigable for skiffs, canoes, motor boats, launches or other small water craft, and whether or not the same or any of them constitute a passageway for salmon or other merchantable sea-going fish to spawning grounds.

A copy hereof has been transmitted to the Governor of Alaska.

Very respectfully,

C. C. Moore, *Commissioner.*

Approved June 11, 1929.

John H. Edwards,
Assistant Secretary.

Executive Order

NENANA TOWN SITE, ALASKA

Under and pursuant to the provisions of the act of Congress approved March 12, 1914 (38 Stat. 305), it is ordered that Executive Order No. 3489, issued June 10, 1921, containing the Alaska Railroad town site regulations, is hereby amended to authorize the Secretary of the Interior to reappraise and sell the unimproved lots in Nenana town site, Alaska, belonging to the United States, and to readjust the assessments levied against them for the improvement of streets, sidewalks, and alleys, and for the promotion of sanitation and fire protection by the Alaska Railroad prior to August 31, 1921.

As to the lots within said town site which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

Herbert Hoover.

The White House,
June 12, 1929.

[No. 5136]

Circular No. 1198

REGULATIONS PERMITTING THE EXPORTATION OF TIMBER FROM ALASKA (CIRCULAR NO. 1092) AMENDED[t]

Department of the Interior,
General Land Office,
Washington, August 5, 1929.

Circular No. 1092, approved August 27, 1926, containing the regulations governing the exportation of timber from Alaska under the act of April 12, 1926 (44 Stat. 242), is hereby amended as follows:

> (2) Sales of timber suitable for manufacturing purposes are hereby authorized in quantities, if found available, sufficient to supply a mill or proposed mill for a period of as much as twenty years, when it is satisfactorily shown that the purchaser in good faith intends to develop an enterprise for the cutting of this class of timber for export from Alaska and the sale does not endanger the supply of such timber for local use. The amount of timber that any one purchaser will be permitted to purchase under this provision and the period of the contract will be governed by the capacity of the mill and the estimated quantity that it will be capable of producing during the period covered by the contract of sale. When a twenty years' supply is sold the period within which the same must be cut (twenty years) will begin to run from the time that the contract of sale is executed, if the manufacturing plant has been built, or from the time that the mill has been constructed and ready to begin operations if it is to be built, but in no case will more than two years be allowed for construction, and each contract shall contain a provision that all rights acquired thereunder shall be forfeited if operations have not been commenced within three years from the date of execution of the contract, unless, upon satisfactory showing the Secretary of the Interior, shall, in his discretion, excuse the

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[t] See footnote j, p. 262.

delay. Commencement of operations in this sense will be construed as a bona fide commencement of actual cutting of timber in quantity sufficient to show that it is the purpose of the purchaser to fulfill the conditions of the contract and that it was not entered into merely for speculative purposes.

(5). The district officers will make appropriate notations upon the records of their office and transmit the application to the Commissioner of the General Land Office, and at the same time transmit the duplicate to the Chief of Field Division at Anchorage, Alaska, or to an examiner located in the particular land district who shall have been designated by the Chief of Field Division to make appraisals. Upon receipt of the same the latter will without delay cause the timber applied for to be examined and appraised. The appraisal rates will be based upon a fair stumpage rate taking into consideration the quality of the timber and its accessibility to market. In no event will any timber suitable for manufacturing purposes be appraised at less than $1 per thousand feet, board measure. After an examination and appraisal has been made the Chief of Field Division will at once submit his report and recommendation to the Commissioner of the General Land Office, together with a statement of facts showing whether such sale would endanger the supply of timber for local use. The Government reserves the right to reappraise the remaining standing timber at the expiration of five years from the date of commencement of the timber cutting period as set forth in paragraph 2 hereof and at intervals of five years thereafter, but in no instance shall the appraisal be at more than double the rate of the original appraisal.

(7). All contracts shall contain provisions against waste and precaution against forest fires. The Government may reserve the right to insert in a contract a provision authorizing the disposition for local use of timber that is not suitable for manufacturing purposes upon the area described in the contract, to another or others pursuant to the provisions of Circular No. 491, page 92, sections 1 and 2.[1] Contracts entered into under these rules and regulations will also be subject to the right of qualified persons to locate, select, settle upon, or enter the lands involved under the provisions of the public land laws applicable to Alaska, but such claimants shall not have any title to or interest in the timber purchased under the contract or be permitted to interfere with the purchaser's operations incident to the cutting and removal of the timber.

(8). At the expiration of a contract a new contract may, in the discretion of the Secretary of the Interior, be entered into for a period of not to exceed twenty years, where there is sufficient timber available to warrant it. Prior good faith of the purchaser and substantial compliance with the conditions of the expired contract will be given consideration with reference to awarding a new contract. A new appraisal shall be made at that time for the purpose of fixing the stumpage price.

TIMBER SALE CONTRACT

(9) At the end of the period designated herein a new contract may, in the discretion of the Secretary of the Interior, be entered into, for a period of not exceeding twenty years, provided that there is sufficient timber suitable for manufacturing purposes available to warrant, and further provided that the provisions and conditions of this contract shall have been faithfully complied with. The price to be paid for the timber will be based upon an appraisal to be made at that time.

Very respectfully,

C. C. Moore, *Commissioner.*

Approved August 5, 1929.

Ray Lyman Wilbur, *Secretary.*

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[1] The reference is to sections 1 and 2, page 92, of Circular No. 491 as issued in pamphlet form, reproduced on p. 257 hereof.

CIRCULAR NO. 1203

GRAZING REGULATIONS CONTAINED IN CIRCULARS NOS. 491 AND 1138 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 2, 1929.

MR. GEORGE A. PARKS,
Ex Officio Commissioner, Juneau, Alaska.

REGISTER AND CHIEF OF FIELD DIVISION,
Anchorage, Alaska.

REGISTERS AND RECEIVERS,
Fairbanks and Nome, Alaska.

GENTLEMEN: In order to conform to the order of the Secretary of the Interior of October 3, 1929, transferring supervision of all reindeer activities in Alaska, from the office of education to the ex officio commissioner of Alaska, representing the Interior Department, subject to the general supervision and control of the Secretary of the Interior, effective November 1, 1929, the regulations governing the leasing of lands in Alaska for grazing livestock issued in pursuance of the act of March 4, 1927 (44 Stat. 1452), approved January 7, 1928, contained in Circulars Nos. 491 and 1138, are hereby amended by substituting for sections 3 and 4 thereof, the following:

3. After the establishment of a grazing district applications for leases may be filed in the proper district land office. Applications should be filed in duplicate except applications for reindeer grazing which should be in triplicate:

(*a*) Applications to lease lands for reindeer grazing filed by natives of Alaska or associations of such natives may be filed by the natives themselves or through a supervisor or other responsible official designated by the ex officio commissioner of Alaska for the Department of the Interior.

(*b*) After a serial number has been assigned by the Register of the district land office to an application for a lease, one copy will be forwarded to the Commissioner of the General Land Office and one to the chief of field division, Anchorage, Alaska, each copy to be accompanied by a status report. If the application is for reindeer grazing the register will attach to the triplicate copy thereof a status report and will make such disposition thereof as may be requested by the said ex officio commissioner of Alaska.

(*c*) Applications for leases must conform substantially to the appended Form 4-469.

4. The chief of field division will cause an investigation to be made of all applications to lease for grazing purposes except of applications filed by natives of Alaska for reindeer grazing and report to the General Land Office as to the livestock to be grazed on the land; as to the carrying capacity of the areas sought; as to the improvements, if any, existing thereon; as to their use and occupancy and as to the feasibility of granting the lease applied for Recommendation should also be made as to what rental should be charged and whether such charge should be deferred for any particular period.

(*a*) The said ex officio commissioner or such official as he may designate to act for him, will make report, in duplicate, similar to that described in section 4, except as to charge for rental, on all applications to lease for reindeer grazing filed by natives of Alaska. The report will be filed in the proper district land office. The register will transmit the original copy to the General Land Office and the duplicate copy to the chief of field division.

(*b*) The chief of field division will submit to the General Land Office such report and recommendation as he may deem proper in connection with all applications to lease lands for reindeer grazing filed by natives of Alaska.

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved, December 2, 1929.

JOHN H. EDWARDS,
Assistant Secretary.

AMENDMENT OF ENTRIES

[Reported, 44 L. D. 181]

Circular No. 423

REVISED REGULATIONS GOVERNING AMENDMENT OF ENTRIES PURSUANT TO SECTION 2372 R. S., AS AMENDED. BY ACT OF FEBRUARY 24, 1909 (35 STAT. 645), AND OTHERWISE

Department of the Interior,
General Land Office,
Washington, D. C., July 10, 1915.

Registers and Receivers, United States Land Offices.

Sirs: Section 2372, United States Revised Statutes, as amended by the act of Congress approved February 24, 1909 (35 Stat. 645), reads as follows:

> Sec. 2372. In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or, when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered and that every reasonable precaution and exertion was used to avoid the error, with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence submitted to them, in each case, together with their written opinion both as to the existence of the mistake and the credibility of every person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made and that every reasonable precaution and exertion has been made to avoid it, is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if the same has not been disposed of and is subject to entry, or if not subject to entry, then to any other tract liable to such entry, selection, or location; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize such change of entry, nor shall anything herein contained affect the right of third persons.

For the purpose of governing the administration of the provisions of this statute and to define the circumstances under which amendments of entries will be granted pursuant to its provisions, or by virtue of the authority of the department to recognize and establish rights and equities not strictly within the purview and contemplation of such statute, the following rules are provided and will be followed:

1. Applications for amendment must be filed in the local land office of the United States having jurisdiction over the land sought to be entered, and should be substantially in accordance with the printed form herewith. This form may be used for the amendment of nonmineral entries where the applicant is either the original entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be verified by the oath

of the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

2. The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it is made to appear that proper precaution was taken to avoid error at the time of making the original entry, location, or selection; and where there has been undue delay in applying for amendment, the application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown, and the delay explained to the entire satisfaction of the Commissioner of the General Land Office.

3. The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by any adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and, in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

4. Where no final certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the affidavit of the applicant, corroborated as hereinafter required, will be sufficient; but where final certificate has issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location, or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other incumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, and also by his wife, if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be clear and free of incumbrance.

5. The affidavit of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must verify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

6.[1] The affidavit of the applicant must be executed before the register or receiver of the land office where the application is made, or before a United States commissioner, or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated, as required by the act of March 4, 1904 (33 Stat. 59). The corroborating affidavits may be made before any officer authorized to administer oaths and using a seal.

7. When an application to amend is filed in your office, you will make proper notations on your records and forward it to the General Land Office with your monthly returns, with your recommendation written at the place indicated in the form, and thereafter you will make no disposition of the land applied for until instructed by the General Land Office.

8. When an application to amend is received in the General Land Office, together with proper report and recommendation from the register and receiver, it will be considered, and, if found satisfactory, the amendment will be allowed and proper correction made on the records, of which you will be duly advised, to the end that the necessary corrections may be made on the records of your office and the applicant properly notified. Where an application is denied, an appeal may be taken to the department.

9. Where amendments are allowed of claims upon which final proof has been submitted, and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must make affidavit, showing that the land described in the application for amendment is the same land to which which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

10. The statute to which the foregoing regulations refer does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of, occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

11. Amendment for the purpose of enlarging the area of a desert land entry will be granted under and in the conditions and circumstances now to be stated.

(*a*) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

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[1] See Circular No. 884, p. 1035.

(*b*) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(*c*) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

12. Applications for amendment presented pursuant to rule 10 will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within one year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within one year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless*, That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under the rules given above and on the prescribed form, in so far as the same are applicable. A supplemental affidavit should also be furnished, if necessary, to show the facts.

13. Application to amend desert land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by paragraph 12 of the circular of September 30, 1910, as amended March 23, 1914, and the provisions of paragraph 13 thereof, as amended February 25, 1915 (Circular No. 383).[a]

14. Where entries, selections, or locations are improperly allowed by the land department, as where the lands are not subject to such entries, selections, or locations, amendments will not be allowed,

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[a] These circulars have been superseded by Circular No. 474. See pars. 12 and 13, pp. 421 and 422.

because such claims, being invalid, should be canceled, and upon cancellation thereof a new entry, selection, or location may be allowed as though the former had never been made.

15. Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of the entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

The circular of April 22, 1909 (37 L. D. 655), and all other circulars or instructions concerning amendments incompatible herewith, are hereby revoked.

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones,
First Assistant Secretary.

(Form omitted.)

AMENDMENT OF ENTRIES UNDER PARAGRAPH 10, CIRCULAR NO. 423 (44 L. D. 181)

Instructions

Department of the Interior,
General Land Office,
Washington, June 26, 1924.

Chiefs of Divisions C, F, and K, General Land Office.

Sirs: Paragraph 10, of Circular No. 423 (44 L. D. 181), provides for the amendment of certain classes of entries on equitable grounds, and paragraph 12 restricts the allowance of such amendments to cases wherein at least one legal subdivision of the lands originally entered is retained in the amended entry, and the application for amendment is submitted within one year next after discovery of the existence of the conditions relied upon as entitling the entryman to the relief sought, or within one year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered.

In a number of instances, the most recent being the case of William Olson, Miles City 049153, the department has reversed decisions of this office denying applications to amend under said paragraph 10 on the sole ground that the applicant either failed to retain one legal subdivision or to present his application within one year.

It would appear to follow that said paragraph 12 is not mandatory, and if this office, upon consideration of all the facts presented, concludes that equitable relief is warranted under paragraph 10, it should, if necessary, waive either or both of the restrictions of paragraph 12, and grant the amendment.

You will be governed accordingly.

Very respectfully,

WILLIAM SPRY, *Commissioner*

[Reported, 51 L. D. 281]

ISSUANCE OF AMENDED PATENT TO TRANSFEREE

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, November 13, 1925.

FINNEY, *First Assistant Secretary:*

By decision of April 3, 1925, unreported, the department affirmed your [Commisisoner of the General Land Office] decision of September 24, 1924, rejecting the application of Minnie C. Coleman to make homestead entry for NW. ¼ SE. ¼, sec. 29, T. 2 N., R. 20 W., N. M. M., New Mexico.

The decision was based on evidence to the effect that the tract applied for was in the possession of Harris Miller, claiming as a remote transferee of Mancel H. Thompson, to whom a patent for NE. ¼ SE. ¼, sec. 30, said township, issued July 31, 1903, under a forest lieu selection filed April 17, 1901.

On September 15, 1922, said Miller applied to so amend the patent as to make the description read NW. ¼ SE. ¼, said sec. 29. Your office has reached the conclusion that the application to amend is in conformity with the regulations, but instructions have been informally requested as to whom the amended or supplemental patent should issue, it being stated that, under the long-established practice of your office, the patent would issue to Mancel H. Thompson. The cases of Hawley *v.* Diller (178 U. S. 476) and Nicholas Van Gass (44 L. D. 139) are cited in support of your practice.

Prior to the amendment of section 2372, Revised Statutes, by the act of February 24, 1909 (35 Stat. 645), there was no law under which an application by the transferee of a patented selection could be entertained. As amended by the act cited, said section provides—

> In all cases where an entry, selection, or location has been or shall hereafter be made of a tract of land not intended to be entered, the entryman, selector, or locator, or, in case of his death, his legal representatives, or when the claim is by law transferable, his or their transferees, may, in any case coming within the provisions of this section, file his or their affidavit, with such additional evidence as can be procured showing the mistake as to the numbers of the tract intended to be entered, * * * with the register and receiver of the land district in which such tract of land is situate, who should transmit the evidence * * * to the Commissioner of the General Land Office, who, if he be entirely satisfied that the mistake has been made * * * is authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered. * * *

Under the regulations, an application for amendment filed by the transferee of a patented entry, selection, or location must be supported by an abstract of title, showing present ownership by the applicant of the tract sought to be eliminated from the patent, and a duly recorded conveyance to the United States of the tract erroneously entered and patented. Miller has filed such abstract and reconveyance, and unless a patent for the tract to which the selection is amended is issued to him, he will not thereby acquire a merchantable title, even though the patent recites the reason for its issuance, but he will be put to the trouble and expense of applying to the local courts to quiet his title.

By dealing with Miller as the transferee of the patented tract, and accepting his conveyance thereof, you became bound to issue to him a patent for the tract which he has shown he thought he purchased and which the selector thought was the land he was occupying and had transferred to Miller's remote transferor.

I find nothing in the cases of Hawley *v.* Diller and Nicholas Van Gass, supra, which has any bearing upon the question presented in this case.

[Reported, 51 L. D. 335]

ISSUANCE OF PATENT ON AMENDED ENTRY TO TRANSFEREE

Instructions

Department of the Interior,
Washington, January 22, 1926.

Finney, *First Assistant Secretary:*

Reference is made to your [Commissioner of the General Land Office] letter of January 13, 1926, asking instructions in regard to the issuance of patent on an amended homestead entry where the land was transferred after issuance of final certificate, and where no patent has issued.

The entry referred to was made by Everett Chambers for land described as lots 1 and 2, E. ½ NW. ¼ and NE. ¼, sec. 30, T. 17 S., R. 54 W., 6th P. M., Colorado. Final certificate issued May 15, 1919, but no patent has issued. The land has been transferred to Oris L. Balsiger.

A resurvey of this township shows error in the description of the tracts held under this entry, and the proper description is given by the surveyor as lots 3 and 4, E. ½ SW. ¼ and SE. ¼, sec. 30, said township, which calls for lands one-half mile south of that given in the entry. Mr. Chambers requested amendment in accordance with the new survey.

The question presented is whether it would be proper in issuing patent on this entry when amended, to issue same in the name of the transferee, or whether it should issue in the name of the entryman.

In the case of Harris Miller, decided November 13, 1925 (51 L. D. 281), which involved amendment of a patented entry to embrace lands of a different survey description from that given in the entry as patented, the department held that the new patent should issue in the name of the transferee. The reason for that ruling was that the transferee would not have a merchantable title for the land under the new description unless patent issued to him, and would be put to the trouble and expense of applying to the courts to quiet his title. It seems that the same reasoning would apply in the instant case and that the rule should be the same even though patent has not been heretofore issued in his case.

The land was subject to transfer after issuance of the final certificate, and the description proposed for the patent is for lands which do not satisfy the description contained in the transfer. In case the evidence of title in the transferee be sufficient to justify his recognition for amendment of the entry at his request, it is deemed proper to issue the patent in his name as transferee. By designating him as transferee of the original entryman, the identity of the basic claim will be indicated. The decision in the Harris Miller case, supra, should be applied in the same manner.

AMERICAN ANTIQUITIES

UNIFORM RULES AND REGULATIONS PRESCRIBED BY THE SECRETARIES OF THE INTERIOR, AGRICULTURE, AND WAR TO CARRY OUT THE PROVISIONS OF THE ACT FOR THE PRESERVATION OF AMERICAN ANTIQUITIES, APPROVED JUNE 8, 1906 (34 STAT. L. 225)

INSTRUCTIONS, DECEMBER 28, 1906.

1. Jurisdiction over ruins, archæological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest, shall be exercised under the act by the respective Departments as follows:

By the Secretary of Agriculture over lands within the exterior limits of forest reserves, by the Secretary of War over lands within the exterior limits of military reservations, by the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, provided the Secretaries of War and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects covered by the act of June 8, 1906, as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

2. No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States *in situ*, and remain an object of interest, shall be granted.

3. Permits for the examination of ruins, the excavation of archæological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

4. No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit named in the permit.

5. Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or description of the particular site or area to be examined, excavated,

or searched, so definite that it can be located on the map with reasonable accuracy.

6. No permit will be granted for a period of more than three years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

7. Failure to begin work under a permit within six months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

8. Applications for permits shall be referred to the Smithsonian Institution for recommendation.

9. Every permit shall be in writing and copies shall be transmitted to the Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of these rules and regulations.

10. At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

11. Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

12. All permits shall be terminable at the discretion of the Secretary having jurisdiction.

13. The field officer in charge of land owned or controlled by the Government of the United States shall, from time to time, inquire and report as to the existence, on or near such lands, of ruins and archæological sites, historic or prehistoric ruins or monuments, objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

14. The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and these rules and regulations, and may fully examine all work done under such permit.

15. All persons duly authorized by the Secretaries of Agriculture, War, and Interior may apprehend or cause to be arrested, as provided in the act of February 6, 1905 (33 Stat. L. 700), any person or persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands under the supervision of the Secretaries of Agriculture, War, and Interior, respectively.

16. Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and these rules and regulations, or there taken or made, contrary to the terms of the permit, or contrary to the act and these rules and regulations, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

17. Every collection made under the authority of the act and of these rules and regulations shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and these rules and regulations, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

WASHINGTON, D. C., *December 28, 1906.*

The foregoing rules and regulations are hereby approved in triplicate and, under authority conferred by law on the Secretaries of the Interior, Agriculture, and War, are hereby made and established, to take effect immediately.

E. A. HITCHCOCK,
Secretary of the Interior.
JAMES WILSON,
Secretary of Agriculture.
WM. H. TAFT,
Secretary of War.

JURISDICTION OF INTERIOR DEPARTMENT OVER RUINS, ARCHAEOLOGICAL SITES, ETC.

DEPARTMENT OF THE INTERIOR,
Washington, February 1, 1928.

Certain questions discussed in a letter dated January 14, 1928, from Jesse L. Nusbaum, department archæologist, concerning jurisdiction of this department over ruins, archæological sites, and objects covered by the act of June 8, 1906 (34 Stat. 225), have been referred to me for consideration.

Mr. Nusbaum states that an expedition in charge of Mr. Paul Martin, State archæologist, is to be sent out this coming summer by the State Historical Society of Colorado, to make explorations and gather such objects of antiquity as may be located on sec. 2, T. 38 N., R. 19 W., and sec. 35, T. 39 N., R. 19 W., in the Ruin Canyon country near Spargo, Colo., and in that connection the following questions are propounded:

1. The particular ground on which Mr. Martin desires to begin work has quite recently been filed on, so he understands, by a homesteader and he wishes to know if, under the law, this filing is subject to the reserved rights of the department to issue archæological permits thereon, or if they deal both with the Government and the homesteader, or the homesteader alone.

2. Does "under the jurisdiction of the departments (Interior, Agriculture, and War)" of section 3 of the act for the preservation of American antiquities imply that the Secretaries of the three departments can issue archæological permits covering examinations and

investigations on unperfected entries or on lands patented since the act was passed in 1906?

3. Would it be possible under the law to retain within the various departments, permanent jurisdiction over the archæological remains included in present unperfected claims and future entries?

4. If a permit to prospect for oil and gas is outstanding on these designated sections, will that in any way prevent the issuance of an archæological permit thereon, or in any way hamper the work that the State Historical Society hopes to undertake on these sites?

The act of June 8, 1906, supra, entitled "An act for the preservation of American antiquities" authorizes the President to declare by public proclamation such objects situated on lands owned or controlled by the Government to be national monuments, and to reserve parcels of land for their protection and management. The act provides in its first section that it shall be a criminal offense to appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument situated on lands owned or controlled by the United States " without the permission of the secretary of the department of the Government having jurisdiction over the lands on which such antiquities are situated."

Section 3 provides for the issuing of permits for the examination of ruins, the excavation of archæological sites, et cetera, by the Secretaries of the Interior, Agriculture, and War, " upon the lands under their respective jurisdiction." Section 4 authorizes the Secretaries of the respective departments to make uniform rules and regulations for carrying out the provisions of the act. In accordance with the authority granted, uniform rules and regulations were prescribed by the three Secretaries under date of December 28, 1906, jurisdiction thereunder to be exercised by the Secretary of Agriculture over lands within the exterior limits of National Forests, by the Secretary of War over lands within the exterior limits of military reservations, by the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, and provided for cooperative action in appropriate cases.

The statute applies to lands owned or controlled by the United States. Obviously, the phrase " lands owned or controlled by the United States " includes lands the title to which is in process of acquisition by entrymen. The jurisdiction of the Land Department over public lands continues so long as the legal title remains in the United States. A homestead entry, although it gives the party entering certain rights of occupation, does not so convey title or divest the United States of property in it as to change its character as lands of the United States. From the time of the entry the homesteader has the right of possession as against trespassers, and all others except the United States. He may treat the lands as his own, so far, and so far only, as is necessary to carry out the purposes of the act. He has an inchoate title, subject to be defeated only by failure on his part to comply with the requirements of the homestead law. As between the United States and the settler the land is to be deemed the property of the former, so far as it is necessary to protect it from waste. The law contemplates the possibility of his abandoning it, and he may not in the meantime despoil it, or perform any act upon it, which impairs its value. United States *v.* Williams et al. (18

Fed. 475); United States *v.* Taylor (35 Fed. 484); Petty *v.* Desmond (129 Fed. 1); Shiver *v.* United States (159 U. S. 491); United States *v.* Buchanan (232 U. S. 72); Union Naval Stores Company *v.* United States (240 U. S. 284).

Clearly, therefore, under the law, ruins and other objects within the purview of the act of 1906, supra, which may be located on lands occupied by a homesteader, belong to the United States—the owner of the fee—at least until the entryman has earned the equitable title to the land, and are subject to the right of the Government to issue permits or licenses for the examination, excavation, and recovery thereof, as contemplated by the act of 1906, supra. By the legislation referred to Congress reserved the right to say who shall go upon its lands to search for such objects, and to impose conditions on their disposition, and, in my opinion, the duly authorized agents of the Government can go upon lands included in the unperfected claim of a homesteader for the purpose of exploring and excavating the lands, without violation or infraction of the homesteader's right of possession, which is held subject to the will of Congress. Congress, if it saw fit, could dispose of the lands to other parties, and if Congress has the power of disposition, it must follow that it could authorize others to go upon the land for the purpose of making investigations, explorations, and the gathering of objects of scientific interest.

This sufficiently answers the first question and that part of the second question pertaining to examinations and investigations on unperfected entries.

Permits may not be issued, however, for excavations and investigations on patented lands. As stated above, the statute applies to lands owned or controlled by the United States. It is fundamental that the jurisdiction of the Land Department terminates with the issuance of patent. The act of June 8, 1906, supra, authorized no reservation or exception in patents for lands embracing ruins or archaeological sites. Only such exceptions can be included in patents to public lands as are specifically prescribed by existing law, and the inclusion of any others therein would be wholly without effect. Burke *v.* Southern Pacific Railroad Company (234 U. S. 669). It follows that an entryman of public lands embracing ruins and archaeological sites, upon showing compliance with statutory conditions, is entitled to an unrestricted patent.

This answers that branch of question 2 concerning jurisdiction over patented entries, and also covers question 3.

In my opinion, the fact that lands desired to be explored are embraced in an outstanding oil and gas prospecting permit under the act of February 25, 1920 (41 Stat. 437), would not prevent the granting of a permit for examinations and explorations under the act of June 8, 1906, supra. The holder of a permit under section 13 of the act aforesaid has merely an exclusive right to prospect for oil and gas within the area covered by his permit, and to use and occupy so much of the surface as may be necessary to his operations. The department has determined that it has authority to grant permits for concurrent operations for different minerals, deposits, or materials which may occur on or in the lands. See paragraph 3, Oil and Gas

Regulations of March 11, 1920 (47 L. D. 437; 50 L. D. 276; ibid. 640; 51 L. D. 180; ibid. 623).

There would seem to be no reason, therefore, why the Government should not have permittees under the acts of 1906 and 1920 on the same land at the same time.

I believe the foregoing fully covers the questions submitted by Mr. Nusbaum.

E. O. Patterson, *Solicitor*

Approved.

John H. Edwards, *Assistant Secretary.*

ARIZONA LANDS

Circular No. 825

INSTRUCTIONS RELATIVE TO THE DISPOSAL OF CERTAIN LANDS IN COCONINO COUNTY, ARIZ., TO THE OCCUPANTS THEREOF

Department of the Interior,
General Land Office,
Washington, May 13, 1922.

Register and Receiver,
Phoenix, Ariz.

Sir: By Executive Order No. 1786, approved June 11, 1913, all of the lands in T. 41 N., R. 2 W., G. and S. R. M., were temporarily withdrawn from settlement, location, sale, or entry. This withdrawal was under the act of June 25, 1910 (36 Stat. 847), and was for the purpose of reclassifying said lands pending the enactment of legislation governing the disposition thereof. The act of July 28, 1914 (38 Stat. 558), authorized and directed the survey and platting of the occupied and improved lands in W. ½ SW. ¼ sec. 16, all secs. 17, 19, 20, 21, 28, 29, and 30, said township and range, same being adjacent to the town site of Fredonia.

Executive Order No. 2979, approved October 22, 1918, restored to settlement, location, sale, and entry all that portion of said township outside of the town-site limits, said restoration including secs. 1 to 15, inclusive, the E. ½; NW. ¼; and the E. ½ SW. ¼ sec. 16, all sec. 18, secs. 22 to 27, inclusive, and secs. 31 to 36, inclusive. Regulations governing this restoration were approved March 7, 1919.

The act approved March 20, 1922 (42 Stat. 467), provided:

> That section 3 of the act entitled "An act authorizing the survey and sale of certain lands in Coconino County, Arizona, to the occupants thereof," approved July 28, 1914 (Thirty-eighth Statutes at Large, page 558), is amended to read as follows:
>
> Sec. 3. That any person, or his successors in interest, who prior to January 1, 1914, were in the actual occupancy of and improving one or more of said tracts for agricultural purposes, not exceeding in all eighty acres, and have maintained the same in good faith for said purposes, upon the filing of an application to enter the same within six months from the filing of the plat of said survey in the local land office, shall be entitled to a patent for such tract of tracts upon paying the sum of $1.25 per acre therefor. All such tracts not covered by valid applications at the expiration of said six months shall thereafter be subject to cash entry upon payment of $1.25 per acre.

This amendment made no change in section 3 of the original act except to extend the maximum amount of land that may be included in one application from 20 to 80 acres.

A special survey of the agricultural tracts, reservoir site, and cemetery reserve has been made, and same was approved April 22, 1921.

Copies of same are furnished your office, to be formally filed on July 1, 1922, and from this day will run the 6-months' period for filing applications under section 3, as amended. Copies of said approved plat and of these regulations are to be sent by your office to all the occupants of said tracts as shown by the field notes of survey, and to any other parties shown by the records of your office to be entitled thereto, and also to all proof-taking officers in Coconino County and to all United States commissioners in the vicinity thereof.

All persons desiring to assert a claim under the provisions of section 3, as amended, of the act of July 28, 1914, must, within six months from July 1, 1922, when the plat of said survey is officially filed in your office, file their applications for such lot or lots, under oath, correctly describing same by tract numbers, and setting forth fully all the facts as to occupancy and improvements and any and all other facts that may be material in determining the rights of the parties to said tracts.

Applicants to purchase said lots must show themselves qualified so to do as to age and citizenship, or that he has declared his intention to become a citizen, and furnish a nonmineral affidavit.

Upon receipt of such application, you will assign current serial number thereto and in the event that the applicant by himself or through his predecessors in interest, shows actual occupancy and improvements commencing prior to July 1, 1914, and also shows to the satisfaction of your office that he has maintained the same in good faith, for the purpose of securing title thereto, you will issue notice of publication.

Should it appear that any applicant is claiming in whole or in part, a tract or tracts shown by the field notes and survey to be occupied by a person or persons other than applicant, you are directed not to allow applicant to make final proof and payment except on special written notice, by registered mail to all others who appear by said field notes and plat as claimants to the same tract. Said special written notice must be issued contemporaneously with the issuance of the notice for publication.

Notice of such application to purchase and intention to obtain title shall be published in a newspaper of general circulation in the vicinity of said lands, at the expense of the applicant, for a period of four weeks, according to the usual form and a copy thereof will be posted in your office. Said notice will advise all persons claiming adversely thereto that they should file any objections or protests against the allowance of an application within the period of publication, otherwise the application may be allowed. At the expiration of the period of publication, proper proof thereof must be filed in your office. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. After proof of publication, if no adverse claims are filed, upon submission of satisfactory proof, and on receipt of payment for said lands at the rate of $1.25 per acre, a cash certificate may then be issued.

Any of said lots remaining undisposed of at the expiration of six months from the date of filing of the plat of survey in your office, will be subject to cash entry by any qualified applicant upon payment of $1.25 per acre.

Acknowledge receipt of these regulations, and give them all the publicity possible without expense to the Government by furnishing copies thereof for publication as an item of news to the various newspapers in the vicinity of said lands. You will also post a copy in your office and transmit copies to the postmasters nearest said lands for posting in their offices.

Very respectfully,

William Spry, *Commissioner.*

Approved May 13, 1922.

E. C. Finney, *First Assistant Secretary.*

[illegible] are furnished [illegible] only [illegible] this day will run [illegible] for filing applications under section [illegible] approved [illegible] these regulations are to be sent by you [illegible] occupants of said tracts as shown by the field notes of survey, and to any other parties shown by the records of your office to be entitled thereto, and also to all proof-taking officers in Coconino County and to all United States commissioners in the vicinity thereof.

All persons desiring to assert a claim under the provisions of section [illegible], as amended, of the act [illegible], 1914, must, within six months from July 1, 1922, when the plat of said survey is officially filed in your office, file their applications for such lot or lots, under oath, correctly describing same by tract numbers, and setting forth fully all the facts as to occupancy and improvements and any and all other facts that may be material in determining the rights of the parties to said tracts.

Applicants to purchase said lots must show themselves qualified so to do as to age and citizenship, or that he has declared his intention to become a citizen, and furnish a nonmineral affidavit.

Upon receipt of such application, you will assign current serial number thereto and in the event that the applicant by himself or through his predecessors in interest, shows actual occupancy and improvements commencing prior to July 1, 1914, and also shows to the satisfaction of your office that he has maintained the same in good faith, for the purpose of securing title thereto, you will issue notice of publication.

Should it appear that any applicant is claiming in whole or in part, a tract or tracts shown by the field notes and survey to be occupied by a person or persons other than applicant, you are directed not to allow applicant to make final proof and payment except on special written notice by registered mail to all others who appear by said field notes and plat as claimants to the same tract. Said special written notice must be issued contemporaneously with the issuance of the notice for publication.

Notice of such application to purchase and intention to obtain title shall be published in a newspaper of general circulation in the vicinity of said lands, at the expense of the applicant, for a period of four weeks, according to the usual form and a copy thereof will be posted in your office. Said notice will advise all persons claiming adversely thereto that they should file any objections or protests against the allowance of an application within the period of publication, otherwise the application may be allowed. At the expiration of the period of publication, proper proof thereof must be filed in your office. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. After proof of publication, if no adverse claims are filed, upon submission of satisfactory proof, and on receipt of payment for said lands at the rate of $1.25 per acre, a cash certificate may then be issued.

Any of said lots remaining undisposed of at the expiration of six months from the date of filing of the plat of survey in your office, will be subject to cash entry by any qualified applicant upon payment of $1.25 per acre.

ARKANSAS LANDS

CIRCULAR NO. 864

LANDS ERRONEOUSLY MEANDERED AND SHOWN ON PLATS AS WATER-COVERED AREAS—PREFERENCE RIGHT TO PURCHASE—ACT OF SEPTEMBER 21, 1922

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 18, 1922.

Registers and Receivers, United States Land Offices, Arkansas.

GENTLEMEN: The following regulations are for the guidance of your office, the chief of field division, and the public in matters affected by the act of Congress approved September 21, 1922 (42 Stat. 992), entitled "An act granting to certain claimants the preference right to purchase unappropriated public lands in the State of Arkansas," a copy of which is hereto appended:

1. Applications to purchase under this act must be sworn to and may be executed before any officer having a seal and authorized to administer oaths in the county or land district in which the lands are located, and must be filed with the register and receiver of the local land office in that district within 90 days from the date of the passage of this act, if the lands have been surveyed and plats filed in the local land office, otherwise within 90 days from the filing of such plat. The applicant must show that he is either a native-born or naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based, and that the applied for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation had, if any, and how long continued. This application must be supported by the affidavits of two persons having personal knowledge of the facts alleged in the application. Upon receipt of such application the local officers will assign current serial number thereto.

2.[1] If all the land applied for is surveyed and is vacant, not withdrawn, or otherwise reserved from such disposition, the local officers, after noting the application on their records, will suspend action thereon and will promptly forward same to the chief of field division for investigation and appraisement of the land in accordance with the provisions of the act. If for unsurveyed land, the local officers will note the application and suspend same, transmitting it to the Commissioner of the General Land Office for consideration as to whether or not the lands applied for are in fact public lands and of the class contemplated by the act under which title is sought. During such suspension the lands described in the application shall not be disposed of.

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[1] Amended by Circular No. 872, p. 305.

3. When an application is received by the chief of field division, he will assign same to a field examiner for investigation and appraisement of the land in accordance with the provisions of the act. The examiner will make a written report thereon as to the development or improvement for agricultural purposes and the evidence obtained as to whether or not the lands are of the class contemplated by the act, recommending the allowance or rejection of the application. If such report is favorable and the chief of field division is of the opinion that the application should be allowed, he will return it to the register and receiver with the appraisement, report, and recommendation to that effect, whereupon the register and receiver will pass upon it in regular order in the light of the report, which is to be attached to the application as a part of the record and transmit same to the General Land Office with their recommendations. If, however, the chief of field division is of the opinion that the entry should not be allowed, he will have a full report prepared and transmit the entire record to the General Land Office for consideration and action, advising the register and receiver thereof. If the report justifies such action, this office will direct proceedings against the application under the circular of February 26, 1916, under which the claimant would have the right to apply for a hearing to determine whether or not he is entitled to purchase the land applied for.

4. If upon consideration of the application in the General Land Office, with report and appraisement, it shall be determined that the applicant is entitled to purchase the lands applied for, the local officers will be authorized to notify the applicant at once by registered mail that he must within thirty days from service of notice deposit with the receiver the appraised price, or thereafter, and without further notice, forfeit all rights under his application.

5. Upon payment of the appraised price of the land the local officers will issue notice of publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation designated by the register in the vicinity of the lands once a week for five consecutive weeks (or thirty consecutive days, if in a daily paper) immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the affidavit of the publisher to be filed in the local office.[2] The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. The register and receiver will cause a notice similar to the notice for publication to be posted in the local land office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in the local land

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[2] See instructions of Oct. 19, 1929, p. 1149.

office prior to the date fixed by the sale evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.*

6. Upon submission of satisfactory proof, the register and receiver will, if no protest or contest is pending, allow a final entry and issue final certificate, transmitting same to the General Land Office with their regular monthly returns.

WILLIAM SPRY, *Commissioner.*

Approved November 18, 1922.

E. C. FINNEY, *First Assistant Secretary.*

(Act omitted.)

CIRCULAR NO. 872

AMENDMENT TO CIRCULAR NO. 864

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 5, 1923.

Registers and Receivers, United States Land Offices, Arkansas.

GENTLEMEN: Paragraph 2 of Circular No. 864 issued November 18, 1922, under the act of September 21, 1922 (42 Stat., 992), "granting to certain claimants the preference right to purchase unappropriated public land in the State of Arkansas" is hereby amended as follows:

> If all the land applied for is surveyed, and is vacant, the local officers, after noting the application on their records, will suspend action thereon and will promptly forward same to chief of field division for investigation and appraisement of the land in accordance with the provisions of the act. If for unsurveyed land, the local officers will note the application and suspend same, transmitting it to the Commissioner of the General Land Office, for consideration as to whether or not the lands applied for are in fact public lands, and of the class contemplated by the act under which title is sought. During such suspension the lands described in the application shall not be disposed of.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved February 5, 1923.

E. C. FINNEY, *First Assistant Secretary.*

CIRCULAR NO. 1190

INSTRUCTIONS UNDER THE ARKANSAS DRAINAGE LAWS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 5, 1929.

REGISTER, *Little Rock, Ark.*

SIR: Your attention is directed to the subjoined act approved February 28, 1929 (45 Stat. 1410), affecting lands within the St. Francis Levee district, Arkansas.

Sections 1, 2, and 3 of the act impose no duties on this department nor do they require any change in the matter of entry, proof, payment, or patent. The proviso to section 1 excludes Government land, entered or unentered, from levy, assessment, or tax until the date an entryman or purchaser thereof has earned the right to a patent. If and when equitable title to any particular tract shall have passed from the Government of the United States to an entryman or purchaser, the levy, special assessment, or tax to which consent was given will become effective.

Section 4, however, provides for the purchase after foreclosure by any drainage district in Tps. 14, 15, 16 N., R. 9 E., and Tps. 15, 16 N., R. 10 E., 5th P. M., in Mississippi County, and in Tps. 11 and 12 N., R. 6 E., in Poinsett County, Ark., and does not apply to the balance of the lands in the St. Francis Levee district. It is in effect an amendment of the act of January 17, 1920 (41 Stat. 392), which expressly prohibited the issuance of patent to a drainage district for lands bid in by it.

The following instructions are issued under the act of January 17, 1920, as amended by section 4 of the act of February 28, 1929.

1. All unentered, unreserved public lands in the above-described townships in the State of Arkansas which are subject to entry, and entered lands for which no final certificates have issued, are by said acts made subject to the State drainage laws to the same extent and in the same manner except as hereinafter noted in which lands of like character held in private ownership are or may be subject to said laws.

2. Certified lists showing the amount of the charges assessed against each smallest legal subdivision are required by the act to be furnished by the county officers to the register of the district land office in which the lands are located as soon as the charges would become a lien on the land if in private ownership. It is the duty of the district land officer to compare said lists with the records of his office, and if any charges are assessed against land which is not subject to the State drainage laws, he will promptly notify the county auditor thereof, and advise him that the lands are not subject to sale thereunder.

3. The charges against the Government lands subject thereto may, under section 3 of the act of January 17, 1920, be enforced by a sale of the lands by the State in the same manner and under the same proceedings as such charges would be enforced against lands held in private ownership.

Said section 3 makes it the duty of the State officials to certify officially to your office a statement showing the name of the purchaser of each tract, including land bid in for a drainage district, the price at which each legal subdivision was sold, the amount assessed against it, the penalties and interest, the cost of the sale, and the amount of excess, if any, over and above all lawful assessment charges and the cost of sale. You will allow no entries under this act until this requirement has been complied with.

When such statement has been filed in your office, you will at once make proper notes thereof on the records of your office and furnish this office a copy of such statement.

4. Section 5 of the act of January 17, 1920, provides that purchasers of unentered lands at such sales by the State have 90 days from the date of sale and purchasers of entered but unpatented lands

have 90 days from the expiration of the period of redemption provided for in the drainage laws under which the lands were sold, no redemption having been made within which to pay to the receiver of the proper district land office $5 per acre, together with the usual fees and commissions both original and final, charged in entry of lands under the homestead laws, and make entry.

5. Purchasers, (other than an improvement or drainage district), of land from the Government under the act of 1920 are required to have the qualifications of a homestead entryman which must be shown by his affidavit. Any purchaser hereunder shall exhaust his homestead right to the extent of the amount of lands purchased by him, and not more than 160 acres can be sold to any one purchaser. The tracts must be entered by legal subdivisions, but they need not be contiguous or in one body.

6. Unless the purchaser of unentered lands, at the sale by the State files application for a patent and pays the required amounts, within the time specified in section 5 of said act, any other qualified person may make application for a patent and file an affidavit of qualifications and pay to the register the unpaid fees, commissions, and purchase price and in addition an amount equal to the drainage charges, penalties, interest, and costs for which the land was sold, and if the lands were bid in for the drainage district, an additional amount equal to 6 per cent per annum on the sum for which the lands were sold from the date of sale and shall become subrogated to the rights of such purchaser and shall be entitled to receive a patent for not more than 160 acres of said lands.

7. When payment is made to effect subrogation as provided in paragraph 6 of these regulations and section 6 of the act, the register shall serve notice upon the purchaser at the sale that an application for patent for the lands purchased by him has been filed and that the amount of the drainage charges, penalties, interests, and costs of the sale will be paid to him upon submission of proof of purchase and payment of said sums. The register shall make such payment as soon as said requirement shall have been fulfilled. If the lands were bid in for a drainage or improvement district, the register will make such payments to the proper county officers.

8. Section 5 of the act of January 17, 1920, permits the bidding in of lands for a drainage district. Section 4 of the act of February 28, 1929, provides that in case of the foreclosure of the liens of any improvement or drainage district, and the lands have been purchased by said district, said improvement or drainage district may, upon proof of the sale and purchase and payment of $5 per acre, together with the usual fees and commissions charged entry of lands under the homestead laws, where such payment has not heretofore been made, receive a patent for the land. In case of unentered land, a preference right exists for 90 days from date of sale. In case of entered lands, the preference-right period is for 90 days from the expiration of the period of redemption. The drainage or improvement district may exercise the right of purchase after the period mentioned in the absence of an adverse claim. No limitation is placed on the amount of land an improvement or drainage district may enter under the act.

9. Proof of the foreclosure of the land and of the failure of the entryman to redeem the lands in accordance with State statutes relating to the taxation of lands in private ownership in Arkansas must be furnished under the certificate and seal of the officer of the State declaring the foreclosure. Said certificate should be presented to the register of your office, whereupon, should no objection appear, you will cancel the entry upon the records of your office, as of the date of the receipt of said certificate, note such cancellation with proper reference to the entry on the certificate, and forward the certificate to this office. For 90 days after the expiration of the period of redemption provided by the Arkansas laws the purchaser at the sale, including the improvement district, if bid in by the district, may furnish the certificate mentioned, make entry of the lands, and receive patent in his or its own name. Should such purchaser or district fail to make entry within the 90-day period mentioned, any other person, upon furnishing said certificate, may secure the cancellation of the entry and make entry.

Rules 6 and 7 hereof should be observed in allowing purchases of entered lands.

10. If a homestead entry, after the land covered thereby has been sold for delinquent taxes, should be subsequently relinquished or canceled prior to the expiration of the period of redemption, the purchaser at the tax sale, if the taxes have not been redeemed, will have the preference right for 30 days, after due notice of the cancellation or relinquishment of the entry, to file an application to purchase the land without having to wait until the expiration of the period of redemption. Such right is given to the actual purchaser only if the land has not been redeemed. This right to purchase is not given to the homestead entryman who allowed the land to be sold for taxes and then relinquished the same.

11. In the sale of lands by the State, should there be paid any excess over and above the drainage charges due, the excess amount shall be paid to the register for deposit in accordance with sections 3 and 4 of the act of 1920, before patent is issued.

12. To avoid confusion, misunderstanding, and conflict of rights it is hereby provided that no right of redemption, referred to in section 5 of the act, can be acquired by settlement on or application for unentered lands after the hour and date fixed for their sale. You will suspend all applications for such lands advertised for sale under said act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the act is received, unless the applicant shall show by affidavit, duly corroborated, that he settled on the land in good faith prior to the beginning of the sale, for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry the homestead application may then be allowed. If the statement does not show a sale of the land, or it was bid in by the drainage district, the homestead application may be allowed, and the homestead entryman will be required to comply with the

homestead laws in the matter of residence, improvements, and cultivation.

13. Payment of the drainage charges will not be required, and you will formally notify each applicant making a 3-year homestead entry where the land has been sold for delinquent drainage charges and evidence of redemption has not been furnished, the amount of taxes assessed against said land, and of any tax certificates outstanding thereon, and you will file with the application a carbon copy of such letter.

14. You will, however, reject all applications for cash entries under the acts of January 17, 1920, and February 28, 1929, where evidence of redemption is required if the name is not filed in connection therewith.

15. After the expiration of 90 days from the date of sale by the State for drainage charges the unentered lands will be subject to ordinary homestead entry, in which case residence, improvements, and cultivation are required, or to entry under the act of January 17, 1920, which does not require such compliance with the homestead law. The drainage charges and expenses incident to sale will become a lien on the land which can be enforced by the State after patent issues.

16. In case payment is made in purchases under the acts of 1920 and 1929, you will issue the usual cash certificates and receipts and forward the papers to this office, together with evidence showing the qualifications of the purchaser. Should no objection appear patent will issue in due course of business.

17. You will note on the application and receipt in all entries hereafter made for lands in the townships mentioned herein, the following: "Subject to act of January 17, 1920."

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved June 5, 1929.

JOHN H. EDWARDS, *Assistant Secretary.*

(Acts omitted.)

[illegible]

and then relinquished the same.

11. In the sale of lands for taxes, should there be paid any excess over and above the drainage charges [illegible] shall be paid [illegible] in accordance with sections 3 and 4 of the act of 1920, before patent is issued.

12. To avoid confusion, misunderstanding, and conflict of right it is hereby provided that no right of redemption, referred to in section 5 of the act, can be acquired by settlement on or application for unentered lands after the hour and date fixed for their sale. You will suspend all applications for such lands advertised for sale under said act received on or subsequent to the date of sale until after the statement of sale provided in section 7 of the act is received, unless the applicant shall show by affidavit duly corroborated, that he settled on the land in good faith prior to the beginning of the sale, for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry the homestead application may then be allowed. If the statement does not show a sale of the land, or it was bid in by the drainage district, the homestead application may be allowed, and the homestead entryman will be required to comply with the

BOARD OF EQUITABLE ADJUDICATION

[Reported, 49 L. D. 323]

JURISDICTION OF BOARD OF EQUITABLE ADJUDICATION

Department of the Interior,
Washington, D. C., October 17, 1922.

The Commissioner of the General Land Office:

By the act approved September 20, 1922 (42 Stat. 857), sections 2453 and 2454, Revised Statutes, were repealed, and sections 2450, 2451, and 2456, Revised Statutes, were amended to read as follows:

> Sec. 2450. That the Commissioner of the General Land Office is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.
>
> Sec. 2451. That every such adjudication shall be approved by the Secretary of the Interior and shall operate only to divest the United States of the title to the land embraced thereby, without prejudice to the rights of conflicting claimants.
>
> Sec. 2456. That where patents have been already issued on entries which are approved by the Secretary of the Interior, the Commissioner of the General Land Office, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such approval, to the person who made the entry, his heirs or assigns.

The effect of said act is to eliminate the Attorney General from membership on the Board of Equitable Adjudication.

All rules which have heretofore been adopted governing the submission of cases to said board are hereby revoked, and the jurisdiction of the board is defined as covering the following:

All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district in which the land is situated, and special cases deemed proper by the Commissioner of the General Land Office for submission to the board, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith, there being no lawful adverse claim.

The form in which claims approved by you as being within the scope of the foregoing may be submitted to the Secretary of the Interior for approval will be the subject of a conference with you at an early date.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 207]

JURISDICTION OF BOARD OF EQUITABLE ADJUDICATION—SUPPLEMENTAL INSTRUCTIONS

Department of the Interior,
Office of the Secretary,
Washington, September 29, 1927.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: You have been informally requested to be advised whether the final proof on the homestead entry serialized as Las Cruces 022062 can be accepted and submitted to the Board of Equitable Adjudication.

The entry was made on January 13, 1921, by Robert Lee Loftin for the SE. ¼ of sec. 10, T. 3 S., R. 20 W., N. M. M. On August 27, 1925, the widow of entryman filed notice of intention to submit final proof before a United States commissioner at Reserve, N. Mex., on October 14, 1925. Proof of publication was filed, and the notice was duly posted in the local office. The final proof was not submitted until October 28, 1925, and final certificate was withheld at the request of the division inspector, who on August 30, 1927, approved a field report to the effect that the law had been fully complied with and recommending that the final proof be accepted.

The only objection to the acceptance of the final proof is the fact that it was not submitted on October 14, 1925, nor within 10 days thereafter.

In an affidavit, corroborated by a physician's certificate, the widow of entryman states that the delay in the submission of the final proof was due to the fact that she was confined to her bed by illness, and that it was impossible for her to make the trip to Reserve at that time.

Rule 2 of Rules to be Observed in Passing on Final Proof Papers in Preemption and Commuted Homestead Cases, approved February 21, 1887 (5 L. D. 426), provided:

> Where final proof or any part thereof is taken after the day advertised, require new advertisement and new proof, in whole or in part, unless on day advertised due notice had been given of postponement to a day certain by the officer taking the proof, and the proof be taken in accordance with said postponement.

After section 7 of the act of March 2, 1889 (25 Stat. 855), authorized the submission of final proofs within 10 days following the day advertised, new rules were adopted on July 17, 1889 (9 L. D. 123), rule 2 providing that—

> When final proof or any part thereof has not been taken on the day advertised, or within 10 days thereafter under the exception and as required by rule 1, you will direct new advertisement to be made; and if no protest or objection is then filed, the proof theretofore submitted, if in compliance with the law in other respects, may be accepted.

The rule 2 adopted on July 17, 1889, was continued in force in the rules adopted May 9, 1906 (34 L. D. 601).

The jurisdiction of the Board of Equitable Adjudication was defined on October 17, 1922 (49 L. D. 323), as covering the following:

> All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not

effected within the period authorized by law, or where the final proof of testimony or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district in which the land is situated, and special cases deemed proper by the Commissioner of the General Land Office for submission to the board, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith, there being no lawful adverse claim.

It is the opinion of the Department that the act of March 2, 1889, supra, does not forbid the submission to the Board of Equitable Adjudication of meritorious cases such as the one under consideration. That the law has been fully complied with has been clearly established, and to require the widow of the entryman to go to the expense of publishing a new notice would serve no good purpose.

You will, therefore, direct the issuance of final certificate, and upon its receipt the entry should be submitted to the board as a "special case."

Very truly yours,

E. C. Finney, *First Assistant Secretary.*

[illegible]

[illegible] before a United States commissioner at Reserve, N. Mex., [illegible] 14, 1925. Proof of publication was filed and the notice was duly posted [illegible] it was not submitted until October 25, 1926, and final certificate was withheld [illegible] of the division inspector, who on August 30, 1927, approved a field report to the effect that the law had been fully complied with and recommending that the final proof be accepted.

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After section 7 of the act of March 2, 1889 (25 Stat. 853), authorized the submission of final proofs within 10 days following the day advertised, new rules were adopted on July 17, 1889 (9 L. D. 123), rule 2 providing that—

> When final proof or any part thereof has not been taken on the day advertised, or within 10 days thereafter under the exception and as required by rule 1, you will direct new advertisement to be made; and if no protest or objection is then filed, the proof theretofore submitted, if in compliance with the law in other respects, may be accepted.

The rule 2 adopted on July 17, 1889, was continued in force in the rules adopted May 9, 1906 (34 L. D. 591).

The jurisdiction of the Board of Equitable Adjudication was defined on October 17, 1922 (49 L. D. 325), as covering the following:

> All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not

BOUNTY-LAND WARRANTS

[Reported, 41 L. D. 34]

CIRCULAR No. 120[1]

REGULATIONS RESPECTING BOUNTY-LAND WARRANTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 24, 1912.

Registers and Receivers of United States Land Offices:

Warrants for bounty land were and are issued by the Commissioner of Pensions for services in wars or battles prior to March 3, 1855, only. Applications for the issuance thereof should be addressed to that official.

Pursuant to authority conferred by section 2414, Revised Statutes (Appendix B), and other legislation, the following regulations are prescribed to govern the assignment, location, and use of such warrants. All regulations inconsistent herewith are revoked.

You must refuse all warrants presented when the assignments thereof do not accord in every essential particular with the rules herein set forth. When the question of title or genuineness is in doubt you must decline to receive the warrant until the holders thereof have submitted the same to the General Land Office for examination and obtained a favorable decision thereon. This office will render an opinion without charge.

Bounty-land warrants should always be described by number, act, and acreage, and in all instances of use or attempted use the register and receiver must forthwith notify this office thereof by special letter, setting forth a description of the warrant and of the entry by serial number, date, land, and name of the entryman, and also whether the warrant was accepted or refused. If you accept the warrant, you will indorse on the upper left-hand corner of the face of same, a similar description of the entry in red ink.

I. ASSIGNMENTS

1. No assignment of a warrant or power of attorney to sell or locate the same executed prior to the date of the issue thereof can be recognized by this office. (Rev. Stat. sec. 2436.) Assignments must be in writing. Delivery only constitutes no transfer.

2. The assignment and acknowledgment are required to be indorsed as far as practicable upon the warrant. Should it be found necessary to write the entire assignment on a separate paper, which

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[1] See Circular No. 1151, p. 326.

can only occur when prior assignments or acknowledgments have filled entirely the blank space on the warrant, it must be so attached as to show positively that the warrant assigned was in the hands of the party making the transfer. In such cases the signature of the assignor must be affixed in the presence of the officer before whom it is acknowledged, who must certify that at the date of the assignment the warrant was presented by and in possession of the assignor. (See Form No. 5.) The assignments should describe the warrant by number, act, and acreage. Parties should avoid discrepancies in spelling and write their full Christian names and surnames.

3. The same requirement must be observed in preparing acknowledgments of powers of attorney to sell or locate bounty-land warrants.

4. Blank assignments are void, and will not be recognized by this office. The name of an assignee should be written in the assignment before the warrant is sent to the local or General Land Office. Evidence that such assignee procured the warrant for value under the blank assignment may be required.

5. Each assignment or power of attorney must be attested by two subscribing witnesses. The mark of a witness will not be recognized.

6. A person to whom a warrant is transferred will not be recognized as a legal attesting witness to the assignment, nor as a proper officer to take the acknowledgment thereof.

7. The execution of assignments is required to be acknowledged by the assignor in the presence of a register or receiver of a land office, a judge or clerk of a court of record when authorized to take acknowledgments, a notary public, justice of the peace, a commissioner of deeds, or a United States commissioner, who shall certify to the fact of the acknowledgment and to the identity of the assignor. The official seal of said court, notary public, or commissioner shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace or other officer without an official seal (except a register or receiver of a land office), it must be accompanied by an additional certificate under seal of proper authority, establishing the official character of such official and the genuineness of his signature. (See Form No. 15.)

Powers of attorney must be acknowledged in like manner.

8. Assignments executed by unmarried females must be accompanied by evidence that they have attained the age of 21 years.

9. Assignments executed by a commissioner, or other designated person acting under a decree of court, must be accompanied by a duly certified copy of such decree, in which all the proceedings should be recited, and from which it must appear that due, proper, and legal notice of the proceedings had been given to all parties in interest. The jurisdiction of the court must appear. Where assignments can not be procured, the Commissioner of the General Land Office will determine the title to a bounty-land warrant according to the principles and usages of law and equity.

10. Where two assignments exist executed by the same party in favor of different individuals, whether the assignment first in time has been completed or not, to make the second assignment available it must be established by evidence satisfactory to the General Land Office, either that no title passed under the first assignment or that

all claims thereunder have been transferred to the second assignee, renounced, or abandoned.

11. When the name of a person has been inserted in an assignment of a warrant and erased, there should be filed evidence satisfactory to this office consisting of an affidavit, duly authenticated, of the assignor or party or parties by whom said name was inserted and the erasure made, fully explaining the facts and circumstances of such insertion and erasure, and stating that no transfer or delivery of said warrant was made to the party whose name had been so inserted, and that the ownership or custody of said warrant had not been changed by such insertion, which affidavit shall be accompanied by satisfactory evidence that a copy of the same has been served personally or by registered letter upon the party whose name was inserted. The affidavit should set forth that the further object thereof is to afford such party an opportunity to file a protest in the General Land Office against the use of the warrant. When the name of a bona fide assignee has been erased from a transfer, an assignment from said assignee to the present holder of the warrant will be required to perfect the title to the warrant. Material erasures in powers of attorney must be satisfactorily explained.

12. When the assignment of a warrant is executed in a foreign country, and the acknowledgment taken by an officer authorized by the laws thereof to perform such duties, the attestation of the American consul in such country should be obtained as to the official character and genuineness of the signature of such official. If the official character, etc., of the foreign officer is attested by a consular agent of such foreign Government residing in this country, the latter's official character must be certified by the diplomatic representatives of such Government in the United States. When such assignments are executed in a foreign language duly authenticated translations thereof must be furnished. Secretaries of legation and consular officers of the United States are authorized to take acknowledgments, but they must certify the same under their official seals.

13. When the persons named as warrantees are described in the warrant as minors, their assignments thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

14. When an assignment has been executed and witnessed, but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings must be attached to the warrant. Such unacknowledged assignment may also be established to the satisfaction of the General Land Office by competent evidence. When such assignment has not been properly attested, it must be made anew.

15. When an assignment is made by an Indian residing among whites the prescribed form will be adopted with this addition, that the officer taking the acknowledgment shall certify that the Indian is capable of contracting the amount paid for the warrant, and that he saw the same paid to the Indian.

16. Where it is made by an Indian holding tribal relations, his identity and ability to contract must be certified by the superintendent of Indian affairs or Indian agent, either of his own knowledge or on the testimony of the chiefs certifying to the amount paid for said warrant; that the same was paid in his presence; and that the trans-

action was fair and regular. In either case, if the amount paid is not a fair consideration, the assignment will be disregarded.

17. Where a warrant for the service of an Indian is issued or descends to minors who no longer retain their tribal relations, it must be located or sold by a guardian duly appointed and authorized by the proper court for that purpose.

Where the minor or minors retain their tribal relations, the agent or superintendent must certify that they are entitled to the warrant under the laws, usages, and customs of the tribe; and when sold or located, that it was done by the guardian or such proper representative as, according to said laws, usages, and customs, was fully authorized.

Where the signature of a superintendent or an Indian agent is required, the genuineness of the signature of that officer must be certified to by the Commissioner of Indian Affairs.

18. Prior to June 3, 1858, bounty-land warrants were regarded as real estate. Consequently a transfer of a warrant before that date by an administrator must be accompanied by evidence that the same was made in pursuance of an order of court for the sale of the real estate of the decedent.

By the act of June 3, 1858 (11 Stat. 308), bounty-land warrants were declared to be personal chattels, and, as such, assignable by the warrantees, by their widows in certain cases, by their heirs or legatees, or by the legal representatives of the deceased claimant "for the use of the heirs or legatees only."

It follows that the right to assign inures to the assignees of the vendors named above, and to their heirs, legatees, or legal representatives; but these latter are not required to assign "for the use of the heirs or legatees only."

19. Where a warrant has been issued in the name of a deceased soldier, who had applied therefor before his death, the title thereto is declared by section 2444, Revised Statutes (Appendix J), to vest in the widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant.

20. If the claimant died and left a widow, who also was deceased before the issue of the warrant, then the title thereto vests in the heirs or legatees of the warrantee.

21. To make a warrant issued in the name of a deceased person available it should be accompanied by a certificate under seal from the proper court having probate jurisdiction, showing the fact of the death of the warrantee at a specified date and place, and whether he left a widow, giving her name, if there was one. If there was no widow the said certificate should state whether the warrantee died testate or intestate and gives the names of all his heirs a law, specifying adults and minors. Where the assignee of a warrant is deceased a similar certificate should be exhibited setting forth the fact, time, and place of death, his testacy or intestacy, and, in the event he left no will, the names, ages, and places of residence of all the heirs.

22. If it shall appear from such certificate that the warrantee died before the issue of the warrant and left a widow, the assignment of such widow, her heirs, or legal representatives will be a sufficient conveyance of the warrant.

23. If the warrantee died after the issue of the warrant, or if he died before such issue and left no widow, the title vests in his heirs at law or legatees.

24. If he died intestate his heirs, shown to be such by the required certificate of course, may assign the warrant, the adults for themselves and the minor by their guardians, who shall file with the warrant a certified copy of their letters of guardianship or a certificate from the clerk of the proper court stating that such letters had been issued and that they were in force at the date of the assignment.

Or the administrator of the estate of the deceased warrantee who died intestate may assign the warrant "for the use of the heirs or legatees only," upon filing therewith a certified transcript of the letters of administration or a certificate from the clerk of the proper court that the said letters had been issued and that they were in force at the date of the assignment. (See Form No. 6.) Satisfactory evidence may also be required to show that the administrator was appointed at the instance of the heirs or proper parties in interest and transferred the warrant for their benefit.

25. If the warrantee or his assignee died testate a certified transcript of the will must accompany the warrant. If the will specifically disposes of the warrant the legatee or legatees may assign, if adults, in the usual form; if minors, by their guardians as aforesaid. If the will does not specifically dispose of the warrant the executor of the estate of the warrantee may assign "for the use of the heirs or legatees only," but in that case a certified transcript of the letters testamentary or a certificate from the proper authority that such letters had been granted and were in force at the date of the assignment must accompany the transfer. (See Form No. 8.)

26. An assignment executed by an administrator de bonis non, with the will annexed, of the estate of the deceased warrantee or transferee must be prepared in accordance with the Form No. 8 prescribed to be used by an executor and accompanied by evidence of his authority to act as required in the case of an administrator of the estate of a warrantee who died intestate.

II. LOCATIONS

27. Bounty-land warrants may be located by one or more persons who are citizens of the United States or have declared their intention to become such, and have reached majority or by a corporation capable of acquiring and holding the legal title to real property in the jurisdiction where the lands sought lie upon any vacant, surveyed, nonmineral, nonsaline, unreserved, unappropriated public lands of the United States that may be subject to private entry at the time of such location. As no public lands of the United States, except those in the State of Missouri, have been subject to private entry since the passage of the act of March 2, 1889 (25 Stat. 854), such warrants can be located in Missouri only, without any residence upon, cultivation, or improvement of the land. (See Appendix C.)

A corporation locating a land warrant should submit a copy of its charter or articles of incorporation, from which it must appear that it is empowered to acquire and hold realty in said jurisdiction.

Said copy should be certified to by some State or county officer who is required by law to have custody of such charter or articles, and who must also certify that the same have not been annulled or in anywise revoked.

A warrant may also be located on behalf of minor heirs or legatees of the soldier upon whose service the same was predicated. Such location must be made in the names of the heirs or legatees and may be made by guardian, who must procure all necessary judicial authority.

28. A warrant can not be located if assigned so as to vest any one person with a greater interest than any other. In other words, each owner of a warrant at the time of its location must have an equal interest therein. This does not apply to locations by persons in their capacity as heirs.

29. A warrant may be located either at a district land office (see rule 27) or through the agency of this office (Rev. Stat. sec. 2437). If located at a district office, it must be accompanied by a tender of the fees to which the register and receiver are entitled, and by a written application to locate containing a description of the tracts desired and signed by the locator or his attorney in fact. If by the latter, his authority to act must be evidenced by a power of attorney, prepared in accordance with Form No. 14, and indorsed, if practicable, upon the warrant. (See rule No. 2.)

Persons presenting warrants for use or location should furnish affidavits that they are the identical persons to whom the same were issued or assigned, and also a relinquishment thereof to the United States, as follows:

I (or we) do hereby relinquish to the United States the within bounty-land warrant in payment (or in part payment, as the case may be) of the (here describe the tract), located in the name of ——— ———, at the land office at ———, this —— day of ———, 19—.

[SEAL.] (Signed) A B.

Witnesses:
C D.
E F.

The following requirements will also govern in locations, but not in homestead, preemption, or other cases mentioned in the act of December 13, 1894 (28 Stat. 594):

(*a*) The location must be accompanied by the affidavit of the locator or some credible person possessed of the requisite personal knowledge in the premises showing that the land located is not in any manner occupied adversely to the locator, and also a nonsaline affidavit (Form 4–062A).

In jurisdictions where the mineral laws of the United States are applicable you will also require a nonmineral affidavit, Form 4–062. The affidavit of the locator as to the nonmineral and nonsaline character of the land, and that it is not occupied adversely, may be made on Form 4–061a, modified by striking out reference to the act of June 4, 1897.

(*b*) You will require the locator within 20 days from the filing of his location to begin publication of notice thereof, at his own expense, in a newspaper to be designated by the register as of general circulation in the vicinity of the land and to be the nearest thereto. Such publication must cover a period of 30 days, during which time a similar notice of the location must be posted in the local land office and upon the land included in the location.[a]

(*c*) The notice must describe the land, give the date of location, and the name and post-office address of the locator, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be [2] mineral or saline in character, an opportunity to file objection to such location with the local officers for the land district in which the land is situated and to establish their interest therein or the [2] mineral or saline character thereof. Such notices may be prepared by you or by the locator and submitted to you for approval, and should be in substance as follows:

——— LAND OFFICE,
——— ———, 19—.

Notice is hereby given that ——— ———, whose post-office address is ———, county of ———, State of ———, filed in this office on ——— ———, 191—, his application to locate a military bounty land warrant issued in favor of ——— ——— under the provisions of the act of Congress approved ——— ——— upon the ——— of sec —, T. —, R. —, ——— meridian. Any and all persons claiming adversely the land described or desiring to object because of the mineral or saline character of the land, or for any other reason, to the disposition to the applicant, should file their affidavits of protest in this office on or before the —— of ———, 19—.

——— ———,
Register.

The date last specified in the above notice should be not later than 30 days after the beginning of publication and posting.

(*d*) Proof of publication must consist of an affidavit of the publisher or of the foreman of the newspaper in which the notice was published, with a copy of the published notice attached. Proof that the notice remained posted upon the land during the entire period of publication must be made by the locator or some credible persons having personal knowledge of the fact. The register will certify to the posting in your office by a certificate, Form 4–227, modified so as to show the first and last dates of such posting. The first and last dates of such publication and posting must in all cases be given.

30. If the location is made through this office the warrant must be sent to the commissioner with a request that the same be located in a specified land district, and accompanied by a receipt from the register and receiver for the fees to which they may be severally entitled under section 2238, Revised Statutes.

31. Each warrant is required to be distinctly and separately located upon a compact body of land. If the area of the tract claimed should exceed the number of acres called for in the warrant the locator must pay for the excess in cash. If it should fall short he must take the tract in full satisfaction for his warrant. A person can not enter a body of land with a number of warrants without specifying the particular tract or tracts to which each shall be applied and for each warrant there must be a distinct location, certificate and patent.

not true

32. Where the desired tract is subject to entry at a greater minimum than $1.25 per acre the locator, in addition to the surrendered

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[a] See instructions of Oct. 19, 1929, p. 1149.

[2] Reference to nonmineral character of the land must be omitted where the mineral laws do not govern.

warrant, must pay in cash the difference between the value of such warrant at $1.25 per acre and that of the said land; or present a warrant of such denomination as will at the rate of $1.25 per acre cover the rated price of the tract, and pay the excess in value of the land if any in cash. For example: A tract of 40 acres of land held at $2.50 per acre may be entered by the location of a warrant calling for 40 acres and the payment of $50 in cash; or by locating thereon a warrant for 80 acres, the 40 acres embraced in the entry being received in full satisfaction of the same; or a tract containing 80 acres rated at $2.50 per acre may be entered by the location of two 80-acre warrants, or of one for 160 acres, and so on. It will be required, however, in the entry of a tract held at a greater minimum that $1.25 per acre by the location of two or more warrants, that each warrant shall be located upon a specific legal subdivision thereof, which legal subdivision shall be received in full satisfaction of the warrant surrendered therefor; and that the excess in value of the lands, if any there be, shall in each case be paid in cash. Hence, a tract containing 40 acres or less of double minimum lands can not be entered by the location of two 40-acre warrants.

33. The distinction hitherto maintained between the use of warrants in homestead and preemption entries and cases under the act of December 13, 1894 (28 Stat. 594) is hereby abolished. In homestead and preemption entries, future use of warrants will no longer be regarded as locations as ruled in T. M. Pieper (2 L. D. 673), but they will be treated as cash. In all cases you will issue cash receipts and cash certificates as the bases of patents as now required by rule 42. You will not require the location fees exacted by rule 35 nor will you issue location certificates as the foundation of patents nor will each warrant be required to be applied on separate legal subdivisions as in locations (rule 31). The future practice is outlined in rule 42.

34. When a subdivision is fractional a warrant approximating nearest the number of acres embraced therein may be located thereon, but the fractional excess in area must be paid for with cash and will be conveyed in the same patent with the lands covered by the location of the warrant; a legal subdivision, however, other than those entered by the location of the warrant, will not be regarded as a legitimate fractional excess over such location, but will be required to constitute a separate entry. Thus, a person will not be permitted to make one entry of a quarter section of land by the location of a warrant for 120 acres and a cash payment for the remaining subdivision.

35. Registers and receivers of the local land offices are entitled to the following fees for their services in locating warrants, and the several amounts mentioned must be paid at the time of location.

For a 40-acre warrant, $0.50 each to the register and receiver; total, $1.
For a 60-acre warrant, $0.75 each to the register and receiver; total, $1.50.
For an 80-acre warrant, $1 each to the register and receiver; total, $2.
For a 120-acre warrant, $1.50 each to the register and receiver; total, $3.
For a 160-acre warrant, $2 each to the register and receiver; total, $4.

36. Upon issuance patents will be transmitted to the proper local office for delivery, unless proper application shall have been previously filed in this office. In no case will patents be delivered, either by this or the local office, except upon receipt of the duplicate certificate of location or an affidavit of its loss or destruction. A transferee

of the land requesting the delivery of a patent should furnish, in addition to the foregoing, satisfactory evidence that he owns the land as grantee of the locator.

III. MISCELLANEOUS PROVISIONS

37. Upon the loss or destruction of a warrant, or where the lawful owner has been fraudulently deprived thereof, the parties may file in this office an affidavit setting forth a description of the warrant by number, act, and acreage, their interest in the premises, a history of the assignment thereof, a description in detail of its disappearance, and the names of all parties in interest. If the same is deemed sufficient to identify the warrant, and satisfactory in other respects, it will be entered as a caveat against the satisfaction of the warrant. Thereafter the General Land Office will take all reasonable precautions to prevent a use of the warrant by persons not entitled to the benefits thereof. The doctrine governing innocent purchasers of negotiable instruments does not apply to warrants.

38. Neither bounty-land warrants nor the lands entered therewith are liable to be sold or made subject to the payment of any debt or claim incurred by any officer or soldier prior to the issuing of the patent (Rev. Stat. sec. 2436). (Appendix F.)

39. Warrants reissued under Revised Statutes, section 2441, are subject to the same rules respecting assignments that apply to original warrants; but in default of an assignment from the warrantee a decree of title must be obtained from a court of competent jurisdiction and a transcript thereof appended to the reissued warrant. Legal notice must be given to all parties in interest. In proper cases the Commissioner of the General Land Office may accept other satisfactory evidence that the original warrant had been assigned to the claimant.

40. When an entry made by the location of a warrant properly assigned to the locator has been canceled the warrant will be returned to its owner. A transfer of the land by the locator of a warrant is held to carry the warrant. This title reverts to the locator if he indemnifies the grantee for all loss sustained by such cancellation either by the return of the purchase money or by causing the paramount title to the land to be vested in said grantee. Applications for the return of warrants must be accompanied by the duplicate certificate of location or an affidavit showing the inability of the parties to present the same; evidence that the certificate of location and no assignments thereof were recorded in the proper county; and evidence consisting of a certificate from the proper recording officer, or an abstract of title prepared by a reliable abstracter showing all transfers of the land. When the land has been transferred by the locator or those in privity with him there must also be furnished evidence as to whether or not the grantee sustaining the loss occasioned by the cancellation of the location has been indemnified. See R. M. Stitt (33 L. D. 315).

41. When a valid entry is withheld from patent on account of the objectionable character of the warrant located thereon, the parties in interest may procure the issue of patent to the locator by filing in the proper local office an acceptable substitute for said warrant. The substitution must be made in the name of the original locator,

and may consist of a warrant, cash, or any kind of scrip legally applicable to the class of lands embraced in the entry. Two warrants can not be substituted for one originally located, nor will any payment be received that would destroy the identity of the entry.

Cash can not be substituted in locations made since March 2, 1889, outside of Missouri, except in preemption and homestead cases and cases under the act of December 13, 1894. Attention is directed to Hussman *v* Durham (165 U. S. 145). Authority to substitute must be first procured from this office in each case.

IV. USE UNDER HOMESTEAD AND PREEMPTION LAWS AND AS CASH UNDER THE ACT OF DECEMBER 13, 1894 (28 STAT. 594)

42. Warrants for bounty lands may be used in commutation of homestead entries under sections 2277 and 2301, Revised Statutes, and in payment of preemption claims under section 2277, Revised Statutes, and are also receivable as cash at $1.25 per acre under the act of December 13, 1894 (28 Stat. 594), Appendix M, in payment of entries made under the desert land law of March 3, 1877 (19 Stat. 377), and the amendments thereof; the timber culture law of March 3, 1873 (17 Stat. 605), and the amendments thereof; the timber and stone law of June 3, 1878 (20 Stat. 89), and the amendments thereof, or for lands sold at public auction.

The preemption laws and the timber culture act were repealed on March 3, 1891 (26 Stat. 1095). Warrants can still be used in these two classes of entry where the rights of the claimant or entryman attached prior to said repeal, unless otherwise provided by the law under which the land may be opened for entry or other legislation.

In all cases it is immaterial whether the land is in Missouri or not and whether offered or unoffered land is embraced. Warrants can not thus be used where it is otherwise provided by law; where the lands are being disposed of by the United States for the benefit of Indians and where (unless otherwise provided) the lands have been purchased from an Indian tribe since December 13, 1884.

The land must be subject to entry under the law under which the original entry is made, and all residence upon and cultivation and improvement of the tracts which may be required by such law and the regulations thereunder must be complied with.

In reference to homestead and preemption entries and the four classes of entries specified in the act of December 13, 1894, you are advised that one or more warrants are receivable in payment, or part payment, for a tract of land entered under either of the laws designated, at the rate of $1.25 per acre upon the expressed value of the warrants or certificates of location. If the amount of money due on such entry exceeds the face value of the warrant at the rate of $1.25 per acre, the entryman must pay for the excess in cash, but if the face value of the warrant exceeds the amount due on such entry, the claimant must take the tract in full satisfaction of said warrant.

In all cases the warrants are regarded as the equivalent of money to the extent of their value at $1.25 per acre, and it is unnecessary to apply the warrant to a specific tract. For instance, a 40-acre warrant will be received as $50 cash in part payment of a timber and stone entry for 160 acres of land. Said warrant need not be applied on any particular 40-acre tract of said 160 acres, and the fees required by rule 35 will not be paid. The local officers will receive from the United States Treasury their commissions upon surrender thereof, as in the case of entries made with cash.

In initiating an entry under desert land laws, payment may be made in money to the amount of 25 cents per acre, as required by previously existing law or, if preferred, warrants may be tendered as payment, and if the face value of such warrant exceeds the amount of money due in initiating said entry, credit may be given for any balance to be applied to final payment when final proof has been made. In this event you will make such notes on your records as will indicate such credit, giving the number, act, and acreage of the warrant used, and in issuing final papers refer thereon to such credit, collecting any balance due in cash, warrants, or scrip. A notation should also be made on the declaration (Form 4–274) as to such location and credit.

Where such warrants are tendered as payment by other than the party to whom issued, you will require evidence that the entryman is the heir or legatee of the party to whom issued, or see that said warrant has been duly assigned in accordance with rules Nos. 1 to 26.

When a warrant is used in preemption and homestead entries and under the act of December 13, 1894, you will issue receipt 4–131 (new form). (Par. 23, Cir. June 10, 1908.[b]) You will issue certificate 4–189 in entries under the homestead and preemption laws, the timber and stone law, and purchases at public sale; Form 4–200 in desert-land entries; and Form 4–217 in timber-culture entries. You will embody in said certificate and receipt a description of the warrant by number, act, acreage, date of issue, and name of the warrantee.

In locations you will issue Forms 4–002 and 4–191.

In all cases the parties must furnish an affidavit of identity and a relinquishment of the warrant to the United States.

On his "Schedule of serial numbers" (Form 4–115) the register will designate the locations and also the entries in connection with which warrants are used in payment. On his "Abstract of certificates of deposits on account of surveys, military bounty land warrants, scrip, and certificates of location" (Form 4–106a) the receiver will make report of bounty-land warrants located or surrendered as cash as indicated on said abstract. The total of the "Abstract of ceritficates of deposits on account of surveys, military bounty land warrants, scrip, and certificates of location" will be reported by the receiver on the debit side of his "Account current" in the space provided therefor. The receiver will report, upon the proper abstract of collections according to the class of entry in connection with which surrendered, the amount of bounty-land warrants surrendered, together with any amount paid in connection therewith in cash, in the same manner as if the entire payment had been made in cash.

All warrants received must be forwarded to this office with the regular monthly returns.

Very respectfully,

Fred Dennett, *Commissioner.*

Approved May 24, 1912.

Samuel Adams,
First Assistant Secretary.

(Forms and appendices omitted.)

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[b] Circular of June 10, 1908, has been superseded by Circular No. 616. See par. 73, p. 65.

CIRCULAR No. 1151

GENERAL INFORMATION RELATIVE TO BOUNTY-LAND WARRANTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 8, 1929.

1. Warrants for bounty lands were and are issued by the Commissioner of Pensions for services in wars or battles prior to March 3, 1855, only. Applicants for the issuance of warrants should be addressed to that official.

2. Warrants can not now be " located " upon the public lands. The locating privilege was denied except in the State of Missouri after the passage of the act of March 2, 1889 (25 Stat. 854), and there are now no lands known to this office to be subject to warrant location in Missouri.

3. A warrant for bounty lands may be used as cash in commuted homestead, desert land, and timber and stone entries, and for lands sold at public auction, except ceded Indian lands.

4. In the instances mentioned above, warrants are received as the equivalent of money to the extent of their valuation at $1.25 per acre, and it is not necessary to apply the warrant to a specific tract. For instance, a 40-acre warrant will be received as $50 cash in payment or part payment of the money due.

5. In order to use a warrant, as indicated above, it is necessary for the party to make application under one of the four classes mentioned, and all residence upon and cultivation and improvement of the tract, which may be required by such law and the regulations thereunder, must be fully complied with.

ASSIGNMENTS

6. No assignment of a warrant or power of attorney to sell or locate the same executed prior to the date of the issue thereof can be recognized by this office. (Rev. Stat. sec. 2436.) Assignments must be in writing. Delivery only constitutes no transfer.

7. The assignment and acknowledgment are required to be indorsed as far as practicable upon the warrant. Should it be found necessary to write the entire assignment on a separate paper, which can only occur when prior assignments or acknowledgments have filled entirely the blank space on the warrant, it must be so attached as to show positively that the warrant assigned was in the hands of the party making the transfer. In such cases the signature of the assignor must be affixed in the presence of the officer before whom it is acknowledged, who must certify that at the date of the assignment the warrant was presented by and in possession of the assignor. The assignments should describe the warrant by number, act, and acreage. Parties should avoid discrepancies in spelling and write their full Christian names and surnames.

8. The same requirement must be observed in preparing acknowledgments of powers of attorney to sell or locate bounty-land warrants.

9. Blank assignments are void, and will not be recognized by this office. The name of an assignee should be written in the assignment

before the warrant is sent to the local or General Land Office. Evidence that such assignee procured the warrant for value under the blank assignment may be required.

10. Each assignment or power of attorney must be attested by two subscribing witnesses. The mark of a witness will not be recognized.

11. A person to whom a warrant is transferred will not be recognized as a legal attesting witness to the assignment, nor as a proper officer to take the acknowledgment thereof.

12. The execution of assignments is required to be acknowledged by the assignor in the presence of a register or receiver of a land office, a judge or clerk of a court of record when authorized to take acknowledgments, a notary public, justice of the peace, a commissioner of deeds, or a United States commissioner, who shall certify to the fact of the acknowledgment and to the identity of the assignor. The official seal of said court, notary public, or commissioner shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace or other officer without an official seal (except a register or receiver of a land office), it must be accompanied by an additional certificate under seal of proper authority, establishing the official character of such official and the genuineness of his signature.

Powers of attorney must be acknowledged in like manner.

13. Assignments executed by unmarried females must be accompanied by evidence that they have attained the age of 21 years.

14. Assignments executed by a commissioner, or other designated person acting under a decree of court, must be accompanied by a duly certified copy of such decree in which all the proceedings should be recited, and from which it must appear that due, proper, and legal notice of the proceedings had been given to all parties in interest. The jurisdiction of the court must appear. Where assignments can not be produced, the Commissioner of the General Land Office will determine the title to a bounty-land warrant according to the principles and usages of law and equity.

15. Where two assignments exist, executed by the same party in favor of different individuals, whether the assignment first in time has been completed or not, to make the second assignment available it must be established by evidence satisfactory to the General Land Office, either that no title passed under the first assignment or that all claims thereunder have been transferred to the second assignee, renounced, or abandoned.

16. When the name of a person has been inserted in an assignment of a warrant and erased, there should be filed evidence satisfactory to this office, consisting of an affidavit duly authenticated, of the assignor, or party or parties by whom said name was inserted and the erasure made, fully explaining the facts and circumstances of such insertion and erasure, and stating that no transfer or delivery of said warrant was made to the party whose name had been so inserted, and that the ownership or custody of said warrant had not been changed by such insertion, which affidavit shall be accompanied by satisfactory evidence that a copy of the same has been served personally or by registered letter upon the party whose name was inserted. The affidavit should set forth that the further object thereof is to afford such

party an opportunity to file a protest in the General Land Office against the use of the warrant. When the name of a bona fide assignee has been erased from a transfer, an assignment from said assignee to the present holder of the warrant will be required to perfect the title to the warrant. Material erasures in powers of attorney must be satisfactorily explained.

17. When the assignment of a warrant is executed in a foreign country, and the acknowledgment taken by an officer authorized by the laws thereof to perform such duties, the attestation of the American consul in such country should be obtained as to the official character and genuineness of the signature of such official. If the official character, etc., of the foreign officer is attested by a consular agent of such foreign government residing in this country, the latter's official character must be certified by the diplomatic representatives of such government in the United States. When such assignments are executed in a foreign language duly authenticated translations thereof must be furnished. Secretaries of legation and consular officers of the United States are authorized to take acknowledgments, but they must certify the same under their official seals.

18. When the persons named as warrantees are described in the warrant as minors, their assignments thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

19. When an assignment has been executed and witnessed, but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings must be attached to the warrant. Such unacknowledged assignment may also be established to the satisfaction of the General Land Office by competent evidence. When such assignment has not been properly attested, it must be made anew.

20. When an assignment is made by an Indian residing among whites the prescribed form will be adopted with this addition, that the officer taking the acknowledgment shall certify that the Indian is capable of contracting the amount paid for the warrant, and that he saw the same paid to the Indian.

21. Where it is made by an Indian holding tribal relations, his identity and ability to contract must be certified by the superintendent of Indian Affairs or Indian agent, either of his own knowledge or on the testimony of the chiefs certifying to the amount paid for said warrant; that the same was paid in his presence; and that the transaction was fair and regular. In either case, if the amount paid is not a fair consideration, the assignment will be disregarded.

22. Where a warrant for the service of an Indian is issued or descends to minors who no longer retain their tribal relations, it must be located or sold by a guardian duly appointed and authorized by the proper court for that purpose.

Where the minor or minors retain their tribal relations, the agent or superintendent must certify that they are entitled to the warrant under the laws, usages, and customs of the tribe; and when sold or located, that it was done by the guardian or such proper representative as, according to said laws, usages, and customs, was fully authorized.

Where the signature of a superintendent or an Indian agent is required, the genuineness of the signature of that officer must be certified to by the Commissioner of Indian Affairs.

23. Prior to June 3, 1858, bounty-land warrants were regarded as real estate. Consequently a transfer of a warrant before that date by an administrator must be accompanied by evidence that the same was made in pursuance of an order of court for the sale of the real estate of the decedent.

By the act of June 3, 1858 (11 Stat. 308), bounty-land warrants were declared to be personal chattels, and, as such, assignable by the warrantees, by their widows in certain cases, by their heirs or legatees, or by the legal representatives of the deceased claimant "for the use of the heirs or legatees only."

It follows that the right to assign inures to the assignees of the venders named above, and to their heirs, legatees, or legal representatives; but these latter are not required to assign "for the use of the heirs or legatees only."

24. Where a warrant has been issued in the name of a deceased soldier, who had applied therefor before his death, the title thereto is declared by section 2444, Revised Statutes, to vest in the widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant.

25. If the claimant died and left a widow, who also was deceased before the issue of the warrant, then the title thereto vests in the heirs or legatees of the warrantee.

26. To make a warrant issued in the name of a deceased person available it should be accompanied by a certificate under seal from the proper court having probate jurisdiction, showing the fact of the death of the warrantee at a specified date and place, and whether he left a widow, giving her name, if there was one. If there was no widow the said certificate should state whether the warrantee died testate or intestate and give the names of all his heirs at law, specifying adults and minors. Where the assignee of a warrant is deceased a similar certificate should be exhibited setting forth the fact, time, and place of death, his testacy or intestacy, and, in the event he left no will, the names, ages, and places of residence of all the heirs.

27. If it shall appear from such certificate that the warrantee died before the issue of the warrant and left a widow, the assignment of such widow, her heirs, or legal representatives, will be a sufficient conveyance of the warrant.

28. If the warrantee died after the issue of the warrant, or if he died before such issue and left no widow, the title vests in his heirs at law or legatees.

29. If he died intestate his heirs, shown to be such by the required certificate of court, may assign the warrant, the adults for themselves and the minors by their guardians, who shall file with the warrant a certified copy of their letters of guardianship or a certificate from the clerk of the proper court stating that such letters had been issued and that they were in force at the date of the assignment.

Or the administrator of the estate of the deceased warrantee who died intestate may assign the warrant "for the use of the heirs or legatees only," upon filing therewith a certified transcript of the letters of administration or a certificate from the clerk of the proper court that the said letters had been issued and that they were in force at the date of the assignment. Satisfactory evidence may also be required to show that the administrator was appointed at the instance of the heirs or proper parties in interest and transferred the warrant for their benefit.

30. If the warrantee or his assignee died testate a certified transcript of the will must accompany the warrant. If the will specifically disposes of the warrant the legatee or legatees may assign, if adults, in the usual form; if minors, by their guardians as aforesaid. If the will does not specifically dispose of the warrant the executor of the estate of the warrantee may assign "for the use of the heirs or legatees only," but in that case a certified transcript of the letters testamentary or a certificate from the proper authority that such letters had been granted and were in force at the date of the assignment must accompany the transfer.

31. An assignment executed by an adminstrator de bonis non, with the will annexed, of the estate of the deceased warrantee or transferee must be accompanied by evidence of his authority to act as required in the case of an administrator of the estate of a warrantee who died intestate.

IDENTIFICATION OF LANDS PATENTED IN SATISFACTION OF LAND WARRANTS

32. Inquiries are constantly being received in this office to ascertain whether a particular soldier has received a grant of land on account of military service. These inquiries are often for the purpose of obtaining information in order to qualify applicants for eligibility in the National Society, Daughters of American Revolution.

33. In order that this office may best answer such inquiries, it is suggested that as much of the following information as is available be furnished:

(*a*) The full name of the soldier.

(*b*) The period of his service.

(*c*) The State from which he entered the service.

(*d*) The date of his death.

(*e*) The name of his widow.

(*f*) The number of the warrant, the acreage, and the act of Congress under which the warrant was issued.

(*g*) Legal description of the land upon which the warrant is supposed to have been located.

(*h*) If the legal description is not known, describe the land with respect to its distance and direction from some town or city, naming the State in which it is supposed to be located.

34. The public lands in those States bearing the names of the original 13 colonies, also in Kentucky, Maine, Tennessee, Texas, Vermont, and West Virginia, were disposed of by the State authorities. Therefore, this office has no record of land grants, warrant locations, or land entries made therein and it is suggested that any grant made in such States would probably have been made by the State authorities.

35. The following is a list of officials to be addressed relative to lands in the States mentioned.

Connecticut, the State treasurer, Hartford.
Delaware, chairman public lands commission, Dover.
Georgia, secretary of state, Atlanta.
Kentucky, auditor for State, Frankfort.
Maine, State land agent and forest commissioner, statehouse, Augusta.
Maryland, land commissioner, Annapolis.
Massachusettes, department of conservation, statehouse, Boston.
New Hampshire, State forester, Concord.
New Jersey, board of conservation and development, Trenton.
New York, commissioner of land office, Albany.
North Carolina, secretary of state, Raleigh.
Pennsylvania, secretary of internal affairs, Harrisburg.
Rhode Island, no State land.
South Carolina, secretary sinking fund commission, Columbia.
Tennessee, State board of control, Nashville.
Texas, commissioner general land office, Austin.
Vermont, commissioner of forestry, Montpelier.
Virginia, register of land office, Richmond.
West Virginia, State tax commissioner or State auditor, Charleston.

William Spry, *Commissioner*.

Approved January 8, 1929.

E. C. Finney,
First Assistant Secretary.

[illegible] letters of administration or a certificate [illegible] court that the said letters [illegible] as the date of [illegible] quired to show that the administ[illegible] of the heirs or proper part[illegible]

29. If the warrantee or his assignee died testate a certifie[illegible] script of the will must ac[illegible] [illegible] and, in the usual form [illegible] If the [illegible] of the estate of the [illegible] legatees only," but in [illegible] testamentary [illegible] letters had been granted and were in [illegible] ment [illegible]

[illegible] An assignment exec[illegible] the will annexed, of [illegible] must be accompanied [illegible] in the case of an admin[illegible]

IDENTIFICATION OF LANDS PATENTED IN SAT[illegible]

32. Inquiries are constantly being received in this office to ascertain whether a particular soldier has received a grant of land on account of military service. These inquiries are often for the purpose of obtaining information in order to qualify applicants for eligibility in the National Society, Daughters of American Revolution.

33. In order that this office may best answer such inquiries, it is suggested that as much of the following information as is available be furnished:

(a) The full name of the soldier.

(b) The period of his service.

(c) The State from which he entered the service.

(d) The date of his death.

(e) The name of his widow.

(f) The number of the warrant, the acreage, and the act of Congress under which the warrant was issued.

(g) Legal description of the land upon which the warrant is supposed to have been located.

(h) If the legal description is not known, describe the land with respect to its distance and direction from some town or city, naming the State in which it is supposed to be located.

34. The public lands in those States bearing the names of the original 13 colonies, also in Kentucky, Maine, Tennessee, Texas, Vermont, and West Virginia, were disposed of by the State authorities. Therefore, this office has no record of land grants, warrant locations or land entries made therein and it is suggested that any grant made in such States would probably have been made by the State authorities.

CAREY ACT LANDS

[Reported, 37 L. D. 624]

REGULATIONS CONCERNING THE SELECTION OF DESERT LANDS BY CERTAIN STATES AND TERRITORIES

Department of the Interior,
General Land Office,
April 9, 1909.

Section 4 of the act of August 18, 1894, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes" (28 Stat. 372–422), authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to patent to the States of Washington, Oregon, California, Nevada, Idaho, Montana, Wyoming, Colorado, North Dakota, South Dakota, and Utah, or any other States, as provided in the act, in which may be found desert lands, not to exceed 1,000,000 acres of such lands to each State, under certain conditions.

The text of the act is as follows:

Sec. 4. That to aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State, to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the act entitled "An act to provide for the sale of desert land in certain States and Territories," approved March third, eighteen hundred and seventy-seven, and the act amendatory thereof, approved March third, eighteen hundred and ninety-one, binding the United States to donate, grant, and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty-acre tract cultivated by actual settlers, within ten years next after the passage of this act, as thoroughly as is required of citizens who may enter under the said desert-land law.

Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation, and settlement.

As fast as any State may furnish satisfactory proof, according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed, and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: *Provided*, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated out of any moneys in the Treasury not otherwise appropriated one thousand dollars.

In the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1897, and for other purposes, approved June 11, 1896 (29 Stat. 413–434), there is, under the head of appropriation for " Surveying public lands," the following provision:

That under any law heretofore or hereafter enacted by any State providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an act entitled "An act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five," approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation: *Provided*, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

The limitation of time in the above-quoted section 4 was modified by section 3 of the act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1902, and for other purposes," approved March 3, 1901 (31 Stat. 1133–1188), which provides as follows:

SEC. 3. That section four of the act of August eighteenth, eighteen hundred ane ninety-four, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," is hereby amended so that the ten years' period within which any State shall cause the lands applied for under said act to be irrigated and reclaimed, as provided in said section as amended by the act of June eleventh, eighteen hundred and ninety-six, shall begin to run from the date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if the State fails within said ten years to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain.

By the act of March 1, 1907 (34 Stat. 1057), the provisions of the foregoing acts were extended to the desert lands within the former Southern Ute Indian Reservation in Colorado.

Said act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of section four of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the acts amendatory thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively, be, and are hereby, extended over and shall apply to the desert lands included within the limits of the former Southern Ute Indian Reservation in Colorado not included in any forest reservation: *Provided*, That before a patent shall issue for any of the lands aforesaid under the terms of the said act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the act of June fifteenth, eighteen hundred and eighty, entitled "An act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

Sec. 2. That no lands shall be included in any tract to be segregated under the provisions of this act on which the United States Government has valuable improvements or which have been reserved for Indian schools or farm purposes.

In the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1909, and for other purposes, approved May 27, 1908 (35 Stat. 317–347), there is under the head of "Arid lands in Idaho and Wyoming," the following provision:

That an additional one million acres of arid lands within each of the States of Idaho and Wyoming be made available and subject to the terms of section four of an act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and by amendments thereto, and that the States of Idaho and Wyoming be allowed under the provisions of said acts said additional area or so much thereof as may be necessary for the purposes and under the provisions of said acts.

The act of February 18, 1909 (35 Stat. 638), extending the provisions of section 4, act of August 18, 1894, supra, and the amendments thereof, to the Territories of New Mexico and Arizona, reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the provisions of section four of the act of Congress approved August eighteenth, eighteen hundred and ninety-four, being chapter three hundred and one to Supplement to Revised Statutes of the United States, entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," and the amendments thereto be, and the same are hereby, extended to the Territories of New Mexico and Arizona, and that said Territories upon complying with the provisions of said act shall be entitled to have and receive all of the benefits therein conferred upon the States.

Sec. 2. That this act shall be in full force and effect from and after its passage.

The provisions of said section 4, act of August 18, 1894, and the amendments thereof, were also extended to the desert lands within the former Ute Indian Reservation in Colorado, by the act of February 24, 1909 (35 Stat. 644), the text of which is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provision of section four of "An act making appropriation for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," approved August eighteenth, eighteen hundred and ninety-four, and the amendments thereof, approved June eleventh, eighteen hundred and ninety-six, and March third, nineteen hundred and one, respectively, be, and are hereby, extended over and shall apply to the desert lands within the limits of all that portion of the former Ute Indian Reservation, not included in any national forest, in the State of Colorado, described and embraced in the act entitled "An act relating to lands in Colorado lately occupied by the Uncompahgre and White River Ute Indians," approved July twenty-eighth, eighteen hundred and eighty-two: *Provided*, That before a patent shall issue for any of the lands aforesaid under the terms of the act approved August eighteenth, eighteen hundred and ninety-four, and amendments thereto, the State of Colorado shall pay into the Treasury of the United States the sum of one dollar and twenty-five cents per acre for the lands so patented, and the money so paid shall be subject to the provisions of section three of the act of June fifteenth, eighteen hundred and eighty, entitled, "An act to accept and ratify the agreements submitted by the confederated bands of Ute Indians in Colorado for the sale of their reservation in said State, and for other purposes, and to make the necessary appropriation for carrying out same."

SEC. 2. That no lands shall be included in any tract to be segregated under the provisions of this act on which the United States Government has valuable improvements, or which have been reserved for any Indian schools or farm purposes.

1. Under the provisions of the acts quoted the States and Territories are allowed 10 years from the date of the approval of the application for the segregation of the lands by the Secretary of the Interior, in which to irrigate and reclaim them. The Secretary of the Interior may, however, in his discretion, extend the time for irrigating and reclaiming the lands for a period of 5 years, or he may restore to the public domain the lands not reclaimed at the expiration of the 10 years, or of the extended period.

2. The lands selected under these acts must all be desert lands as defined by the acts of 1877 and 1891, and the decisions and regulations of this department therein provided for.

Lands which produce native grasses sufficient in quantity, if unfed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

Lands occupied by bona fide settlers and lands containing valuable deposits of coal or other minerals are not subject to selection.

3. The second paragraph of section 4, before quoted, provides that before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the land selected and proposed to be irrigated, which shall exhibit a plan showing the mode of contemplated irrigation and the source of the water. In accordance with the requirements of the act, the State must give full data to show that the proposed plan will be sufficient to thoroughly irrigate and reclaim the land and prepare it to raise ordinary agricultural crops, for which purpose a statement by the State engineer of the amount of water available for the plan of irrigation will be necessary. The other data required can not be fully prescribed, as it will depend upon the nature of the plan submitted. All information necessary to enable this office to judge of its practicability for irrigating all the

land selected must be submitted. Upon the filing of the map showing the plan of irrigation, and the lands selected, such lands will be withheld from other disposition until final action is had thereon by the Secretary of the Interior. If such final action be a disapproval of the map and plan, the lands selected shall, without further order, be subject to disposition as if such reservation had never been made; and the local officers will make the appropriate notations on the tract books and plat books, opposite those previously made, in accordance with the requirements of paragraph 7.

4. The map must be on tracing linen, in duplicate, and must be drawn to a scale not greater than 1,000 feet to 1 inch. A smaller scale is desirable, if the necessary information can be clearly shown. The map and field notes in duplicate must be filed in the local land office for the district in which the land is located. If the lands selected are located in more than one district, duplicate map and field notes need be filed in but one district and single sets in the others. Each legal subdivision of the land selected should be clearly indicated on the map by a check mark, thus: ✓. The map and field notes must show the connections of termini of a canal or of the initial point of a reservoir with public survey corners, the connections with public survey corners wherever section or township lines are crossed by the proposed irrigation works, and must show full data to admit of retracing the lines of the survey of the irrigation works on the ground.

5. The map should bear an affidavit of the engineer who made or supervised the preparation of the map and plan, Form 1, and also of the officer authorized by the State to make its selections under the act, Form 2. The map should be accompanied by a list in triplicate of the lands selected, designated by legal subdivisions, properly summed up at the foot of each page, and at the end of the list. If the lands selected are located in more than one district, a list in triplicate must be filed in each office, describing the lands selected in that district. Clear carbon copies are preferred for the duplicate and triplicate lists. The lists should be dated and verified by a certificate of the selecting agent, Form 3. The party appearing as agent of the State must file with the register and receiver written and satisfactory evidence, under seal, of his authority to act in the premises; such evidence once filed need not be duplicated during the period for which the agent was appointed. The State should number the lists in consecutive order, beginning with No. 1, regardless of the land office in which they are to be filed. Form of title page to be prefixed to the lists of selections will be found marked "A." Lists received at this office containing erasures will not be filed, but will be returned in order that new ones may be prepared. When a township has not been subdivided, but has had its exteriors surveyed, the whole township may be designated, omitting, however, the sections to which the State may be entitled under its grant of school lands. When the records are in such condition that the proper notations may be made, a section or part of a section of unsurveyed land may be designated in the list; but no patent can issue thereon until the land has been surveyed.

6. A contract in the form herein prescribed (Form 5), in duplicate, signed by the State officer authorized to execute such con-

tract, must also be filed. A carbon copy of the contract will not be accepted.[1] The person who executes the contract on behalf of the State must furnish evidence of his authority to do so.

7. The lists must be carefully and critically examined by the register and receiver, and their accuracy tested by the plats and records of their office. When so examined and found correct in all respects, they will attach a certificate at the foot of each list (Form 4). The register must note on the map, lists, contracts, and all papers the name of the land office and the date of filing over his written signature and will thereupon post the selections in ink in the tract book after the following manner: "Selected ———, 19—, by ——— ———, the State ———, as desert land, act of August 18, 1894, serial No. ———," and on the plats he will mark the tracts so selected "State desert-land selection." After the selections are properly posted and marked on the records, the list, maps, and all papers will be transmitted to the General Land Office.

For rejected selections a new list will be required, upon which the register will note opposite each tract the objections appearing on the records and indorse thereon his reasons in full for refusing to certify the same. The State will be allowed to appeal in the manner provided for in the Rules of Practice. It is required that clear lists of approvals shall in every case be made out by the selecting agents, if after the above examination one or more tracts have been rejected, showing clearly and without erasure the tracts to which the register is prepared to certify. On the map of lands selected the register will mark rejected such tracts as he has rejected on the lists.

8. When the canals or reservoirs required by the plan of irrigation cross public land not selected by the State, an application for right of way over such lands under sections 18 to 21, act of March 3, 1891 (26 Stat. 1095), should be filed separately, in accordance with the regulations under said act.

9. In the preceding paragraphs instructions are given for the designation of the lands by the proper State authorities. Upon the approval of the map of the lands and the plan of irrigation, the contract is executed by the Secretary of the Interior and approved by the President, as directed by the act. Upon the approval of the map and plan, the lands are reserved for the purposes of the act, said reservation dating from the date of the filing of the map and plan in the local land office. A duplicate of the approved map and plan, and of the list of lands, is transmitted for the files of the local land office, and a triplicate copy of the list is forwarded to the State authorities.

10. When patents are desired for any lands that have been segregated, the State should file in the local land office a list, to which is prefixed a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law (Form 6); and followed by an affidavit of the State engineer, or other State officer whose duty it may be to superintend the reclamation of the lands (Form 7).

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[1] Printed copies of the contract, in which the list of lands can be inserted, will be furnished to the State, or to parties dealing with it, on application to the General Land Office.

11. The certificate of Form 6 is required in order to show that the State laws accepting the grant of the lands have been duly complied with.

12. The affidavit of Form 7 is required in order to show compliance with the provisions of the law, that an ample supply of water has been actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, for each tract in the list, sufficiently to thoroughly irrigate and reclaim it, and to prepare it to raise ordinary agricultural crops. A separate statement by the State engineer must be furnished, giving all the facts as to the water supply and the nature, location, and completion of the irrigation works.

If there are some high points which it is not practicable to irrigate, the nature, extent, location, and area of such points should be fully stated. If no part of a legal subdivision is susceptible of irrigation, such legal subdivision must be relinquished. Lands upon which valuable deposits of coal or other minerals are discovered will not be patented to the State under these acts.

13. These lists will be called " lists for patent," and should be numbered by the State consecutively, beginning with No. 1. The list should also show, opposite each tract, the number of the approved segregation list in which it appears. The aggregate area should be stated at the foot of each page and at the end of the list.

14. Upon the filing of such list the local officers will place thereon the date of filing and note on the records opposite each tract listed: " List for patent serial No. ——, filed ——— ——," giving the date.

15. When said list is filed in the local land office there shall also be filed by the State a notice, in duplicate, prepared for the signature of the register and receiver, describing the land by sections, and portions of sections, where less than a section is designated (Form 8). This notice shall be published at the expense of the State once a week in each of nine consecutive weeks, in a newspaper of established character and general circulation, to be designated by the register as published nearest the land. One copy of said notice shall be posted in a conspicuous place in the local office for at least 60 days during the period of publication.

16. At the expiration of the period of publication the State shall file in the local office proof of said publication and of payment for the same. Thereupon the register and receiver shall forward the list for patent to the General Land Office, noting thereon any protests or contests which may have been filed, transmitting such papers, and submitting any recommendations they may deem proper. They will also forward proofs of publication, of payment therefor, and of the posting of the list in their office.

17. Before patents are issued for lands within the former Southern Ute and the Ute Indian Reservations in Colorado, the State will be required to pay the price ($1.25 per acre) fixed by the acts of March 1, 1907, and February 24, 1909. The State will be advised of the number of acres which will be included in the patent and payment shall be made to the receiver of the proper land office, who issue a receipt as in other cases. The money will be accounted for in the same manner as other moneys received from the disposal of such lands.

18. Upon the receipt of the papers in the General Land Office such action will be taken in each case as the showing may require, and all

tracts that are free from valid protest or contest, and respecting which the law and regulations have been complied with, will be certified to the Secretary of the Interior for approval and patenting.

Fred Dennett,
Commissioner, General Land Office.

Approved April 9, 1909.

R. A. Ballinger,
Secretary of the Interior.

(Forms omitted.)

[Reported, 37 L. D. 682]

INSTRUCTIONS GOVERNING THE EXTENSION OF TIME FOR IRRIGATION AND RECLAMATION PLANTS, UNDER SECTION 4 OF THE ACT OF AUGUST 18, 1894, AS AMENDED BY SECTION 3 OF THE ACT OF MARCH 3, 1901

Department of the Interior,
Washington, May 13, 1909.

Secretary Ballinger to the Commissioner of the General Land Office:

Referring to that portion of the act of Congress, above cited (31 Stat. 1188), which authorizes the Secretary of the Interior in his discretion to continue segregation of lands for a period of not exceeding five years, or to restore them to the public domain, where a State has failed to reclaim lands segregated under the Carey Act within the period of 10 years, prescribed by law, you are advised that all such applications must be submitted to me with your report and recommendation, and applications for extension of time will only be entertained upon a showing of the happening of some event preventing completion of the reclamation which could not have been reasonably anticipated or guarded against, such as—

1. Destruction of dams, reservoirs, canals, ditches, or other works constructed, or partly constructed, by storms, floods, or other unavoidable casualties.

2. Inability to complete construction of reservoirs, ditches, canals, etc., within the 10 years because of unforeseen structural or physical difficulties encountered, in cases where construction was promptly begun and diligently prosecuted.

3. Error or misjudgment in surveying and locating ditches, canals, etc., necessitating new surveys and construction in order to effect proper and permanent reclamation.

4. Financial failures on the part of the contractor under the State, which delayed or prevented reclamation and which could not have been foreseen or reasonably anticipated.

5. Other reasons not above specified but falling within the general scope of these instructions will be considered if presented, but in all cases the showing made must be by or through the proper State authorities and clearly and specifically set forth all the facts and reasons which prevented the completion of the contract or reclamation of the land within the 10-year period.

[Reported, 38 L. D. 580]

SUPPLEMENTAL REGULATIONS CONCERNING THE SELECTION OF DESERT LANDS BY CERTAIN STATES AND TERRITORIES[2]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 25, 1910.

By the act of March 15, 1910 (36 Stat. 237), section 4, act of August 18, 1894 (28 Stat. 372–422), commonly known as the "Carey Act," was amended so as to authorize the Secretary of the Interior, upon application of a beneficiary State or Territory, to temporarily withdraw from settlement or entry public lands of the United States, pending survey and investigation preliminary to the filing of application for the segregation of such lands under said act of August 18, 1894.

The text of the act is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That to aid in carrying out the purposes of section four of the act of August eighteenth, eighteen hundred and ninety-four, entitled, "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending eighteen hundred and ninety-five, and for other purposes," it shall be lawful for the Secretary of the Interior, upon application by the proper officer of any State or Territory to which said section applies, to withdraw temporarily from settlement or entry areas embracing lands for which the State or Territory proposes to make application under said section, pending the investigation and survey preliminary to the filing of the maps and plats and application for segregation by the State or Territory: *Provided,* That if the State or Territory shall not present its application for segregation and maps and plats within one year after such temporary withdrawal the lands so withdrawn shall be restored to entry as though such withdrawal had not been made.
>
> Approved March 15, 1910.

REGULATIONS

1. Under the provisions of this amendatory act public lands of the United States may be temporarily withdrawn upon proper application by a beneficiary State or Territory that proper surveys may be prepared and investigation made preliminary to the filing of application by such State or Territory for the segregation of such lands under the Carey Act.

If such application is not filed within one year from the date of withdrawal, the lands so withdrawn will, as directed by the act, be immediately restored to entry.

No provision is made for the extension of such a temporary withdrawal.

2. To obtain the benefits of this amendatory act, the State or Territory, through its proper official, will be required to file in the local land office in the land district within which the lands sought to be withdrawn lie, an application therefor, (see appended Form B), which shall set forth the name of the individual or corporation pro-

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[2] Amended by instructions of June 17, 1914. See footnote, p. 343.

posing to reclaim the lands; that all of the forms and conditions imposed by the State law upon such proposer prior to segregation have been complied with; that from the showing made by the proposer (or state other source of information) it is believed that sufficient water to irrigate the whole of the lands asked to be withdrawn, over and above prior appropriations, is available; and that the proposer has either acquired title to such water or applied for the same, and that the lands are desert in character.

Appended to the application should be a list of the lands asked to be withdrawn. If the lands are unsurveyed, the fact should be set forth, together with a statement that an application for the survey thereof has been filed in the office of the surveyor general.

3. Accompanying such application should be filed an affidavit, (see appended Form C), based upon personal examination, that the lands sought to be withdrawn are desert in character, as contemplated by the Carey Act, and are nonmineral.

This affidavit should be made either by the proposer, his or its engineer, or by the State or territorial engineer, or one of his assistants.

4. Where the lands sought to be withdrawn are situated in more than one land district, a list must be filed in each district, describing the lands in that district.

5. Upon the filing of such application the register will at once note the same upon his records, and will thereafter reject all applications to enter, purchase, or select any of such lands, excepting when settlement or application to enter, purchase, or select prior to the date of filing of the State's application is alleged or disclosed of record. He will then at once transmit the application to this office for further action, first noting thereon the date of filing over his written signature.

6. Within three months after the date of filing the application for withdrawal in the local office the State must file a corroborated affidavit by the proposer, his or its engineer, or the State engineer that the work of surveying and laying out the proposed irrigation system has been actually commenced in the field and is being energetically prosecuted. This affidavit should show the work accomplished and the result.

In default of such showing by the State, the withdrawal will be promptly revoked.

7. In the event that any of the tracts withdrawn are found to be above the proposed irrigation works, or for any other reason not susceptible of irrigation, the fact and description of the nonreclaimable land by smallest legal subdivisions should be at once communicated to this office, that they may be relieved from the withdrawal.

8. If at any time after withdrawal it is shown that the State is not energetically prosecuting the investigation and survey of the lands, that the same are not reclaimable by the proposed system of reclamation, are not desert in character, or for any reason are not subject to the provisions of the Carey Act, or that the proposer is not proceeding in good faith, the withdrawal will be at once revoked.

9.[3] The one year mentioned in the act as the period of withdrawal will commence to run from the date of the filing of the application for withdrawal in the local land office.

Very respectfully,

S. V. PROUDFIT, *Assistant Commissioner.*

Approved.

R. A. BALLINGER, *Secretary.*

(Forms omitted.)

[Reported, 45 L. D. 535]

CAREY ACT—ELIMINATIONS FROM APPLICATIONS FOR SEGREGATION OR WITHDRAWAL

REGULATIONS

DEPARTMENT OF THE INTERIOR,
Washington, November 23, 1916.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: I am in receipt of your letter of October 17, 1916, transmitting for consideration proposed new rules to govern eliminations from applications for segregations under the Carey Act (28 Stat. 372), the withdrawal act of March 15, 1910 (36 Stat. 237), and from applications for segregation or withdrawal.

I do not agree with the conclusion reached in your paper, either from the administrative or legal standpoint. Administratively, I believe proposed rule 1 would lead to confusion and possible hardship and suffering to settlers and applicants, and in cases where segregations are finally allowed might embarrass the disposition of the land under the Carey Act. The general rule of the department, as laid down in numerous decisions, and approved by the Supreme Court in case of Holt *v.* Murphy (207 U. S. 407), is to the effect that the Secretary of the Interior is fully justified in ruling that no applications will be received nor any rights recognized by the tender of an application for land embraced in selections and entries of record until same have been canceled upon the records of the local land office. The reason for such a rule is equally forcible with respect to lands applied for or segregated under the so-called Carey Act or acts supplemental thereto. The act first mentioned provides that the Secretary of the Interior—

> may make necessary regulations for the reservation of the lands applied for by the States, to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved.

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[3] This section was amended by instructions of June 17, 1914 (43 L. D. 281), quoted in Circular No. 334 of July 3, 1914. The section as amended reads as follows:

"Upon departmental approval of an application for temporary withdrawal, the local office will be advised thereof by the General Land Office, and the register will make proper notations upon the records of his office.

"The one year mentioned in the act as the period of withdrawal will commence on the date of approval of the application by the department.

"At the expiration of one year from the date of approval (or at such prior date as the Secretary may determine to restore a part or all of the withdrawn land) the commissioner will advise the local office of such restoration.

"Upon receipt by the local office of such advice immediate notation thereof will be made on the records, and the lands withdrawn will be thereby restored to entry as though such withdrawal had not been made except in case where, by the order of restoration, provision is made under the act of September 30, 1913 (38 Stat. 113), as to the particular conditions governing the restoration.

"In all cases restoration shall be made as provided by the order of restoration; but where it is found proper to restore land with conditions and restrictions, as provided by the act of September 30, 1913, the order of restoration shall be approved by the Secretary of the Interior before becoming effective."

It is argued that under this provision of law lands covered by an application for segregation are subject to settlement and to application for entry until actual segregation of the lands is ordered by the Secretary of the Interior, whereupon such settlements and applications are defeated, but that if the application for segregation shall be finally denied, the subsequently initiated claims are valid.

As indicated, this, in my opinion, is not good administration, either from the standpoint of the Government or the people, and I am not convinced that the act of 1894, supra, necessarily bears out the construction indicated. It provides that the reservation shall be of no force if the application for segregation be not approved, but it also provides that the Secretary may make necessary regulations for the reservation of the lands, to date from the filing of the application, thereby vesting in the Secretary administrative discretion and authority with respect to withdrawal of the lands pending consideration and disposition of the State's application.

Be that as it may, the question appears to be disposed of by the subsequent legislation of September 30, 1913 (38 Stat. 113–114), providing a method for the opening and restoration of withdrawn or reserved lands. Section 1 deals with such reservations as are to be vacated and set aside by the President and vests in him broad discretion as to the time and manner of restoration, in order that good administration may be maintained and equal opportunity afforded the general public. Section 2 of the act is to the effect that—

> where under the law the Secretary of the Interior is authorized or directed to make restoration of lands previously withdrawn, he may also restrict the restoration.

If, therefore, authority for restricting the disposition of lands reserved or withdrawn in connection with applications and segregations under the Carey Act be not found in the Carey Act itself, it is to be found in the act just cited. I therefore hereby establish the following rules and regulations governing lands covered by applications for segregation under the act of August 18, 1894, segregations made under said act, and withdrawals under the act of March 15, 1910, supra, while pending and when eliminated or restored:

1. Lands embraced in pending applications filed by States under the act of August 18, 1894 (28 Stat. 422), and described in accompanying maps and plans of irrigation; lands withdrawn under the act of March 15, 1910 (36 Stat. 237); and lands covered by approved segregations under the act of August 18, 1894, supra, are not subject to settlement, application, entry, or other filings while reserved, withdrawn, or segregated, and applications to file, select, or enter tendered shall be rejected by the register and receiver.

2. Upon rejection of an application for segregation under the Carey Act, or upon elimination of lands from a segregation or a withdrawal under the act of March 15, 1910, such lands, not otherwise withdrawn, reserved, or appropriated, shall be restored to entry under the homestead laws only on a future day fixed or appointed, and to entry, filing, or selection generally on a subsequently fixed or appointed day. Applications may be filed under the regulations of May 22, 1914 (Circular 324, 43 L. D. 254), 20 days before the land becomes subject to entry, filing, or selection contemplated. All ap-

plications under the homestead laws under Circular 324 shall be treated as simultaneously filed on the date the land becomes subject to entry thereunder.

Prior regulations, in so far as they may conflict herewith, are hereby revoked.

Very truly yours,

ALEXANDER T. VOGELSANG.

[Reported, 47 L. D. 605]

CIRCULAR NO. 731

PREFERENCE RIGHT OF ENTRY ON RESTORED CAREY ACT LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 10, 1920.

Registers and Receivers, United States Land Offices.

SIRS: October 30, 1920, the First Assistant Secretary of the Interior approved the following regulations under the act of February 14, 1920 (41 Stat. 407), providing for preference right of State entrymen upon restored Carey Act lands.

(1) The act approved February 14, 1920 (41 Stat. 407), provides as follows:

> That the Secretary of the Interior, when restoring to the public domain lands that have been segregated to a State under section 4 of the Act of August 18, 1894, and the Acts and resolutions amendatory thereof and supplemental thereto, commonly called the Carey Act, is authorized, in his discretion and under such rules and regulations as he may establish to allow for not exceeding ninety days to any Carey Act entryman a preference right of entry under applicable land laws of any of such lands which such person had entered under and pursuant to the State laws providing for the administration of the grant under the Carey Act and upon which such person had established actual bona fide residence or had made substantial and permanent improvements: *Provided*, That each entryman shall be entitled to a credit as residence upon his new homestead entry allowed hereunder of the time that he has actually lived upon the claim as a bone fide resident thereof.

(2) Prior to the restoration to entry of lands theretofore segregated under the Carey Act, you will take steps to ascertain from the proper State officers whether any entries have been allowed under the State law for any of the segregated lands which are to be restored, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

(3) If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under the State law on the basis of which a claim to preference right of entry might be asserted and maintained, then the said act of February 14, 1920, may be disregarded in the restoration of the lands to entry.

(4) But if it appears from the report of the State officers or otherwise that there are entries under the State law which may properly be the basis of preference right under this act, in the order restoring the lands, you will make suitable provision for the filing

of applications to enter or select by those claiming a preference right under this act, when the restoration is effective or during the 20 days preceding, according to existing practice. The period during which such perference right claims may be submitted may be fixed at 30, 60, or 90 days following the date on which such restoration is effective, as may appear best to meet the situation presented by each particular restoration. The order of restoration should instruct the register and receiver that during such preference right period other applications not based on preference rights under this act may be filed pursuant to the terms of the order of restoration, but in the case of lands covered by an application timely filed and claiming a preference right under this act all of such other conflicting applications will be suspended pending action on the application claiming a preference right under this act; and, further, that the register and receiver will take no action on such preference right applications, other than to give same a serial number, note their records, and transmit such applications with report of status and conflicts to your office for action on the preference right claim.

(5) In case the preference right claim is allowed, any conflicting applications will be rejected as to the land embraced in the allowed preference claim; in case the preference right claim is rejected, conflicting applications will then be disposed of the same as if such preference right claim had not been filed.

(6) You are advised that the said act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of the State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to the State laws or not in anticipation of reclaiming the lands and procuring title under the Carey Act, but for the purpose of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

(7) You are also advised that the act does not apply to cases where the State entry has been canceled or forfeited for default on the part of the State entryman in carrying out his part of the contract, unless such default on the part of the State entryman as the result of conditions which culminated in the elimination of the lands from the project; the allowance of a subsequent entry for the same land by the State would be presumptive that the default was the fault of the State entryman whose entry was forfeited or canceled.

(8) You are further advised that any rights to which a claimant may be entitled under this act of February 14, 1920 (41 Stat. 407), are not affected by resolution No. 29 of February 14, 1920, giving preference rights to ex-service men, for by the terms of the resolution rights thereunder are made subject to " prior existing valid settlement rights and * * * preference rights conferred by existing laws or equitable claims subject to allowance or confirmation "; rights under this act of February 14, 1920, are considered to be within the class described by the language quoted.

(9) Applications to enter or select under applicable public land laws in the exercise of the preference rights granted by this act of

February 14, 1920, will be considered and adjudicated the same as other applications under such laws, except as otherwise provided in the act of February 14, 1920; that is to say, each applicant must be qualified under the law under which he seeks to make entry or selection, and he must fully comply with such law in order to secure patent, with the single exception that one who exercises his preference right by making entry under the homestead law "shall be entitled to a credit, as residence upon his new homestead entry allowed hereunder, of the time he has actually lived upon the claim as a bona fide resident thereof."

Very respectfully,

Clay Tallman, *Commissioner.*

CAREY ACT STATUTES AND REGULATIONS

Department of the Interior,
General Land Office,
Washington, March 21, 1924.

There are a number of statutes comprising the law commonly referred to as the Carey Act, but copies of these and of the departmental regulations thereunder are not available for distribution. The following paragraphs, however, will give the citation and the general purport of each of these statutes:

Section 4 of the act of August 18, 1894 (28 Stat. 372, 422), authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to patent to States in which there are desert lands not to exceed 1,000,000 acres of such lands, to each State, under the conditions specified in the act. The lands selected by the several States, within their respective boundaries, are segregated from the public domain for a period of 10 years, the State undertaking within that time to cause an adequate irrigation system to be constructed, and a sufficient water supply to be made available in a substantial ditch, for the reclamation of the lands by irrigation. The lands when patented are disposed of by the States to actual settlers.

The act of June 11, 1896 (29 Stat, 413, 434), authorizes a lien on the land for the cost of construction of the irrigation works and permits the issuance of patent without actual cultivation of the land.

Section 3 of the act of March 3, 1901 (31 Stat. 1133, 1188), authorizes an extension of the period of segregation for five years.

The act of March 1, 1907 (34 Stat. 1057), extends the provisions of the law to the former Southern Ute Indian Reservation in Colorado.

The joint resolution approved May 25, 1908 (35 Stat. 577), grants to the State of Idaho an additional 1,000,000 acres.

The act of May 27, 1908 (35 Stat. 317, 347), grants to the State of Idaho an additional 1,000,000 acres, and to the State of Wyoming an additional 1,000,000 acres.

The act of February 18, 1909 (35 Stat. 638, 639), extends the provisions of the Carey Act to the States of Arizona and New Mexico.

The act of February 24, 1909 (35 Stat. 644, 645), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

The act of March 3, 1909 (35 Stat. 844), permits the States to elect to receive patent for coal lands with reservation of the coal to the United States.

The act of March 15, 1910 (36 Stat. 237), authorizes a temporary withdrawal for one year of lands which the State may propose to select with a view to enabling the State to examine the lands and plan the method of reclamation.

Section 23 of the act of April 4, 1910 (36 Stat. 269, 285), extends the provisions of the Carey Act to the former Uintah Indian Reservation in Utah.

Section 27 of the act of April 4, 1910 (36 Stat. 269, 288), as amended by section 18 of the act of June 25, 1910 (36 Stat. 855, 860), extends the Carey Act to the former Wind River Indian Reservation in Wyoming.

The act of June 22, 1910 (36 Stat. 583), permits Carey Act selections to be made for coal lands where the selection is made with a view to obtaining title to the surface only.

The act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Fort Bridger Military Reservation in Wyoming.

The act of February 21, 1911 (36 Stat. 925), permits the sale of surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

The act of March 4, 1911 (36 Stat. 1363, 1417), grants the State of Nevada an additional 1,000,000 acres.

The joint resolution of August 21, 1911 (37 Stat. 38), grants the State of Colorado an additional 1,000,000 acres.

The act of August 24, 1912 (37 Stat. 496), extends the provisions of the Carey Act to oil and gas lands in the State of Utah where the selection is made with a view to obtaining title with a reservation of the mineral to the United States.

The act of February 27, 1913 (37 Stat. 687), makes a similar provision with regard to oil and gas lands in the State of Idaho.

The act of September 30, 1913 (38 Stat. 113), governs the methods of restoration to the public domain of lands withdrawn for any purpose, including Carey Act segregations and withdrawals.

The act of July 17, 1914 (38 Stat. 509), provides for Carey Act selections upon lands containing phosphate, nitrate, petroleum, oil, gas, or asphaltic minerals where the selection is made with a view to obtaining title with a reservation of the mineral to the United States.

The act of February 14, 1920 (41 Stat. 407), relates to preference rights of Carey Act entrymen upon lands restored to the public domain from Carey Act segregations.

Public Resolution No. 29 (41 Stat. 434), approved February 14, 1920, grants a preference right to ex-service men upon lands restored from Carey Act segregations to the public domain.

The act of January 6, 1921 (41 Stat. 1085), further amends the Carey Act by limiting the time within which the work of reclamation must be commenced.

Public Resolution No. 36 (42 Stat. 358), approved January 21, 1922, amends Public Resolution No. 29, relative to preference rights of ex-service men.

REGULATIONS

The departmental regulations governing Carey Act selections are printed in the land decisions of the Department of the Interior as follows:

34 L. D. 365: Action on relinquishments. January 10, 1906.

36 L. D. 342: States to report annually the lands patented to individuals. March 30, 1908.

37 L. D. 489: Instructions to agents and inspectors. March 9, 1909.

37 L. D. 624: General regulations. April 9, 1909.

37 L. D. 682: Applications for extension of time. May 13, 1909.

38 L. D. 287: Unsurveyed lands. November 3, 1909. Modified. 41 L. D. 649. March 15, 1913.

38 L. D. 580: Temporary withdrawal. April 25, 1910.

41 L. D. 256: Amending 38 L. D. 580. September 7, 1912.

41 L. D. 649: State of Utah, unsurveyed lands. March 15, 1913.

43 L. D. 281: Amending 38 L. D. 580. June 17, 1914.

44 L. D. 32: Phosphate, oil, and other mineral lands, act July 17, 1914. Circular 393. March 20, 1915.

45 L. D. 535: Eliminations from pending or approved applications for segregation or withdrawal. November 23, 1916.

46 L. D. 121: Instructions under act of September 30, 1913 (38 Stat. 113). May 17, 1917.

46 L. D. 126: Carey Act lands in Idaho. Acquisition of area in excess of legal limit. June 27, 1917.

47 L. D. 346: Disposition of applications. Circular 678.[a] March 31, 1920. Amended May 1, 1922.

47 L. D. 605: Preference right of Carey Act entrymen on restored Carey Act lands. Circular 731. December 10, 1920.

49 L. D. 1: Preference rights of ex-service men. Amending 47 L. D. 346. Circular 822, May 1, 1922.

Inquiries relative to the acquisition of title by individuals to lands segregated or patented to a State under the Carey Act, and inquiries by persons desiring to contract with a State for the construction of a system of works for the irrigation of lands under the Carey Act, should be addressed to the officials of the particular State, as follows:

Arizona, State land commissioner, Phoenix.
Colorado, State board of land commissioners, Denver.
Idaho, the commissioner of reclamation, Boise.
Montana, Carey Land Act board, Helena.
Nevada, commission of industry, agriculture, and irrigation, Carson City.
New Mexico, Carey Act Land board, Santa Fe.
Oregon, desert land board, Salem.
Utah, State land commissioner, Salt Lake City.
Wyoming, State board of land commissioners, Cheyenne.

Approved. March 21, 1924.

William Spry, *Commissioner.*

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[a] Superseded by Circular No. 822, p. 779.

CITIZENSHIP

[Reported, 43 L. D. 444]

Circular No. 361

MARRIAGE OF FEMALE CITIZEN TO ALIEN AFTER INITIATING CLAIM TO PUBLIC LANDS—ACT OF OCTOBER 17, 1914 (38 STAT. 740)

Department of the Interior,
General Land Office,
Washington, D. C., November 4, 1914.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to the act of Congress approved October 17, 1914 (38 Stat. 740), copy appended, entitled "An act to provide for certificate of title to homestead entry by a female American citizen who has intermarried with an alien."

1. This act is applicable to all cases in which a female citizen of the United States, either native born or naturalized, has initiated a valid claim to a tract of public land by settlement or by filing an application to enter, or to acquire title under any of the public-land laws.

2. Where a woman who is a native-born citizen of the United States, or who has been fully naturalized, has initiated a claim to a tract of public land and marries before completing title thereto, it will not hereafter be necessary to require her to furnish evidence of her husband's citizenship; but if he be foreign born, she must show, by affidavit, that he is or may hereafter be himself entitled to become a citizen of the United States in accordance with the laws in that behalf made and provided. (Sec. 2169, U. S. Revised Statutes; sec. 14, act of Congress of May 6, 1882, 22 Stat. 58, 61; sec. 7, act of Congress of June 29, 1906, 34 Stat. 596.)

3. Where a woman who has declared her intention to become a citizen of the United States, or who occupies the status of a person who has declared such intention, has initiated a valid claim under some public-land law requiring full citizenship before completing title thereto, her marriage to an alien will not excuse her from showing either that she herself became fully naturalized before her marriage or that her husband is a citizen of the United States, as required by the regulations heretofore in force.

Very respectfully,

C. M. Bruce,
Acting Commissioner.

Approved.

A. A. Jones,
First Assistant Secretary.

(Act omitted.)

CIRCULAR NO. 546

FORWARDING OF RUBBER STAMP "FULL CITIZENSHIP SHOWN" WITH INSTRUCTIONS, ETC.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 21, 1917.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Inclosed find rubber stamp worded "Full citizenship shown," which must be stamped on the serial register in connection with every application to make entry if complete citizenship is shown. The purpose is to avoid any question at the time of final proof in the event it is then claimed that evidence of citizenship was furnished at time of entry.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 49 L. D. 316]

CIRCULAR NO. 857

CITIZENSHIP OF MARRIED WOMEN

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 11, 1922.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Your attention is directed to the act of Congress approved September 22, 1922 (42 Stat. 1021), entitled "An act relative to the naturalization and citizenship of married women," a copy of which is appended.

In all cases of applications for entry of public land, or proofs in support of such entries, by married women otherwise duly qualified to make such entry or proof, you will require a showing of such facts concerning marital status and citizenship as may be rendered necessary by the provisions of said act.

The act makes no change in the existing requirements with respect to a female citizen of the United States who, after initiating a claim to public land, marries an alien, as set forth in paragraph 2, Circular No. 361 (43 L. D. 444), and she must show that her husband is entitled to become a citizen of the United States.

Office Circular No. 44, of August 17, 1911, is revoked.

Very respectfully,

WILLIAM SPRY,
Commissioner.

Approved October 11, 1922.

E. C. FINNEY,
First Assistant Secretary.

(Act omitted.)

[Reported, 51 L. D. 134]

CIRCULAR NO. 1005 [1]

EVIDENCE REGARDING CITIZENSHIP IN PUBLIC-LAND CASES (CIRCULAR NO. 599 SUPERSEDED)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 1, 1925.

Registers and Receivers, United States Land Offices.

GENTLEMEN: The following instructions relative to accepting evidence of citizenship in public land cases and returning citizenship papers to the parties will supersede the instructions (Circular No. 599) of May 14, 1918 (46 L. D. 382):

1. Evidence of a declaration of intention to become a citizen executed more than seven years before the date of the filing, unless it be shown that there is pending a petition for naturalization pursuant thereto filed within seven years after the date of the declaration, is not acceptable.

2. You may hereafter accept as evidence of a party's status a triplicate declaration of intention to become a citizen of the United States or an original certificate of naturalization. However, a certified copy of the paper made by the clerk of the court whence it issued is preferred, and if the copy is of a paper issued after September 26, 1906, it should be on the form prescribed by the Bureau of Naturalization. It is to the party's advantage to file a certified copy, since the triplicate declaration of intention to become a citizen is needed by him when petitioning for admission to citizenship, while the original certificate of naturalization may be lost or mutilated.

3. Triplicate declaration of intention to become a citizen, provided it has not become invalid by reason of its statutory life, or original certificate of naturalization will be returned by this office to the party upon request therefor or to any other person making request, provided it be clearly shown that the person applying is the proper person to receive the paper.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved May 1, 1925.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 1202

EVIDENCE OF CITIZENSHIP

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 16, 1929.

Registers, United States Land Offices.

SIRS: This office is in receipt of information from the Department of Labor that under the new naturalization law (act of March 2,

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[1] See Circular No. 1202, p. 353.

1929, 45 Stat. 1512), effective July 1, 1929, all certified copies of naturalization papers are to be issued by the Commissioner of Naturalization.

As the result of conferences between officials of this office and representatives of the Bureau of Naturalization and of the Department of Labor it has been agreed that the issuance of certified copies of naturalization papers for land-office purposes will be discontinued and in lieu thereof the Bureau of Naturalization will in appropriate cases and on request of this office furnish statements as to the facts of the naturalization of applicants for public lands.

In cases where it is inconvenient or impossible for an applicant to furnish evidence of citizenship or declaration of intention in the form as required by instructions of May 1, 1925, Circular No. 1005, 51 L. D. 134, you may accept a sworn statement of the applicant, giving the facts as to his citizenship status, which statement should include the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and when available, the number of the document in question, if the proceeding has been had since September 26, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which he was a citizen or subject.

The citizenship showing may be incorporated in any of the forms prescribed for use in connection with the entry of public lands. Where the necessary data have been given you will accept same and proceed with the case, leaving it to this office to secure verification of the citizenship status at the proper time.

You will furnish copies hereof to proof-taking officers in your district and give publicity thereto as a matter of news.

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved, November 16, 1929.

JOS. M. DIXON,
First Assistant Secretary.

COAL ENTRIES, ETC.

[Reported, 46 L. D. 131]

Circular No. 557

COAL-LAND REGULATIONS

Department of the Interior,
General Land Office,
Washington, D. C., July 7, 1917.

The following coal-land rules and regulations as now applicable, are herewith published for the instruction of the local land officers and the information of intending applicants. All rules and regulations in conflict herewith heretofore issued under said laws are hereby abrogated.

Rules and Regulations

1. The sale of coal lands is provided for—

(*a*) By ordinary cash entry under section 2347;

(*b*) By cash entry under a preference right to purchase acquired by compliance with the provisions of section 2348.

2. Coal lands may be entered only after survey and by legal subdivisions. The lands must be vacant and unappropriated coal lands of the United States, unreserved, unwithdrawn, and must contain workable deposits of coal and must not be valuable for mines of gold, silver, or copper. Lands containing lignites are included under the term "coal lands."

3. Entry by an individual may be made only by a person above the age of 21 years who is a citizen of the United States or has declared his intention to become such, and shall not embrace more than 160 acres. Entry by an association of persons may embrace 320 acres, but each person composing the association must be qualified as in the case of an individual entryman. A corporation is held to be an association under the provisions of the coal land law.

A married woman may make entry if the laws of the State in which she applies permit married women to purchase and hold for themselves real estate; but she must make the entry for her own benefit, and not in the interest of her husband or any other person, and she will be required, in addition to the other affidavits required herein, to show, by affidavit, whether she is single or married, and, if married, that the purchase price is furnished from her own separate funds in which her husband has no interest.

4. When an association of not less than four persons, severally qualified as required in the case of an individual entryman, shall have expended not less than $5,000 in working and improving a mine

or mines of coal upon the public lands, such association may enter not exceeding 640 acres, including such mining improvements.

5. But one entry of coal lands by any person or association of persons is allowed by the law. No person who, and no association any member of which, either as an individual or as a member of an association, shall have had the benefits of the law may enter or hold any other coal lands thereunder. The right so to enter or hold is exhausted whether an entry embraces in any instance the maximum area allowed by the law or less; also by the acquisition of a preference right of entry unless sufficient cause for the abandonment thereof is shown. Assignment of a preference right of entry under section 2348, Revised Statutes, has not been recognized since April 12, 1907.

6. (*a*) Coal withdrawals, and all withdrawals under the withdrawal act of June 25, 1910 (36 Stat. L. 847), as amended by the act of August 24, 1912 (37 Stat. L. 497), prohibit the allowance of coal filings, applications, and entries while the withdrawals are outstanding. No preference or other right under the provisions of sections 2347–2352, inclusive, United States Revised Statutes, may be initiated or acquired on withdrawn coal lands or lands withdrawn under the provisions of said withdrawal act, subsequent to their withdrawal and prior to their restoration to coal-land entry.

(*b*) An Executive order of withdrawal is operative immediately at the time it is signed by the President.

(*c*) With reference, first, to cases where qualified persons or associations of qualified persons legally and in good faith went into possession of and opened and improved coal mines on the public domain within less than 60 days preceding the date when the lands upon which such mines are situated were withdrawn from coal entry or otherwise withdrawn under said withdrawal act and who have not filed coal declaratory statements; and, second, to cases where qualified persons or associations of qualified persons in good faith filed coal declaratory statements in the proper local land office prior to the date on which the lands covered thereby were withdrawn from coal entry or otherwise withdrawn under said withdrawal act and who, in consequence of such withdrawal orders, have thereby not been permitted to proceed to entry within the preference period, it is to be observed that said withdrawal act and withdrawals made thereunder make no provision whatever for the protection of or passing to patent of any coal-land claim, filing, or application; hence, before such persons in said cases, and other similar cases, may proceed to obtain title, it will be necessary to modify the withdrawal order.

In all these cases your procedure will be to receive, give proper serial numbers to and suspend the offered coal filings or applications and forward same, together with showing in support thereof, to the General Land Office, by special letter, and your report and recommendation thereon, whereupon said office will consider the same with a view of reporting to the department the advisability of recommending that the President modify the outstanding withdrawal order, to the extent of the land involved and only for the purpose of permitting the specified claimants to proceed to entry. In these cases such claimants will, if duly qualified and in the absence of other objections, be permitted upon modification of the withdrawal to purchase at the price existent at the date of the opening and improving of the mine of coal; subject, of course, and in proper cases, to the provisions of the law with reference to the distance of the land from a completed railroad at date of application and payment, and upon the further condition that the claimant or claimants diligently prosecute his, its, or their claim to completion within the time required by law and regulations.

The showing in support of the coal claimant's equities must be in duplicate, under oath and made by the claimant and such other individuals as are personally conversant with all of the facts in the case; be full and complete in every particular and should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the proper officers of the Government in Washington, D. C., to determine whether the case made by the claimant or claimants is such as to entitle him or them to favorable consideration, as hereinabove set forth.

(*d*) Information by means of schedules or diagrams, or both, will be furnished registers and receivers by the Commissioner of the General Land Office of the price at which all coal lands in their respective districts may be entered under the coal-land laws.

(*e*) Until the register and receiver at the proper local land office are in receipt of the coal classification and appraisal (preliminarily to which, generally, the lands are withdrawn under said act of June 25, 1910, as amended by said act of August 24, 1912, from coal filings, applications, and entries, although occasionally lands are classified without withdrawal, in which case the classification, or classification and appraisal, when made, occupies, so far as concerns proceedings under the coal-land laws, the same status as lands classified and appraised after withdrawal), accompanied by notice of the Executive order of restoration, they are not authorized to allow any coal filings, applications or entries for lands covered by Executive withdrawals, and if any such filings are presented they should be rejected outright, subject to the usual right of appeal.

(*f*) Lands classified as coal lands, appraised and restored to filing and entry, are, after the proper local land officers have been duly notified thereof and in the absence of other objection, subject to sale, under the coal-land law (entry, under nonmineral land laws of designated classes, of lands withdrawn or classified as coal lands, or valuable for coal, being permitted at any time prior to application therefor under the coal-land laws where the nonmineral entryman makes such entry with a reservation to the Government of the title to the coal deposits within the entered premises—see Addenda—in which event the coal deposits only may be entered, provided, always, that such coal deposits have then been restored to disposition under the coal-land laws and the regulations in force), at the appraised (or, if reappraised, at the reappraised) price, unless shown by the applicant to be of such character as to be subject to entry under some other law; except, that when lands which were, at the time of appraisal, more than 15 miles from a railroad are brought within the 15-mile limit by the beginning of operation of a new road, all values given in the original appraisal shall be doubled by the register and receiver.

(*g*) All public lands, and the coal deposits therein contained, (1) which have been withdrawn and thereafter classified, only, as coal and restored, (2) which have been withdrawn and thereafter classified as coal "price not fixed" and restored, (3) which have been withdrawn and thereafter restored without classification, or, (4) which have never been withdrawn, but which contain workable deposits of coal, are, if vacant, and otherwise available and so long as such lands are unaffected by, or embraced within, a coal withdrawal or other withdrawal under said withdrawal act, subject to coal filing and entry, unless shown by the applicant to be of such character as to be subject to entry under some other law.

As to the lands and the coal deposits therein contained, mentioned in said subdivision (*g*), the price thereof is, when same are sold under the coal-land laws, not less than $10 per acre when the lands is situated more than 15 miles from a completed railroad and $20 per acre when the land is situated within 15 miles of a completed railroad. When lands lie partly without such limit, the higher price must be paid for each smallest legal subdivision the greater part of which lies within 15 miles of such railroad. The term "completed railroad" is construed to mean a railroad actually constructed, equipped, and operating at the date the applicant filed proper application to purchase and paid the price of the land. The distance is to be calculated from the point on such railroad nearest the land applied for, and the facts in each case, including cases where the appraisal does not show that the appraised land is within the 15-mile limit, must be shown by the affidavit of the applicant, corroborated by the affidavits of two disinterested credible persons having actual knowledge thereof.

(*h*) Lands classified as noncoal are prima facie noncoal in character. You will advise any person presenting an application under the coal-land laws for lands classified as noncoal that he will be allowed 30 days in which to submit evidence, consisting preferably of the sworn statements of experts or practical miners, that the land is in fact coal in character, together with an application that it be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. Such application will be given proper serial numbers and notation thereof made upon the records, and when accompanied by the necessary evidence they will be forwarded to the General Land Office, where, if upon the showing made, and such other inquiry as may be deemed proper, the land is classified as coal land, the coal-land application will be returned for allowance in the absence of other objection. If reclassification be denied, the applicant may, within 30 days from receipt of notice, appeal or apply for a hearing, at which hearing he will be afforded an opportunity to show that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, or to appeal, his application to enter or file will be finally rejected.

(*i*) In so far as any of the preceding subdivisions of this paragraph relate to the selling price of the land under the coal land laws, they are to be considered and observed in connection with what is hereinafter set forth in paragraph 18 of these regulations.

7. A preference right of entry accrues only where a person or association of persons, severally qualified, have opened and improved a coal mine or mines upon the public lands and shall be in actual possession thereof and not by the filing of a declaratory statement.

A perfunctory compliance with the law in this respect will not suffice, but a mine or mines of coal must be in fact opened and improved on the land claimed. The statute clearly contemplates the actual opening of a mine of coal and its improvement as such. Substantial steps, taken in good faith, looking to the creation of an operating and producing coal mine are essential. What specific work or workings constitute the opening of a mine, or what accomplishes the improvement of a mine when opened, are matters as to which no arbitrary and inflexible rule can be laid down. Each case as it arises must be determined upon the facts disclosed; but work merely for prospecting purposes does not meet the requirements of the coal land laws conferring a preference right of purchase upon one who opens and improves a coal mine upon the public domain.

There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to a preference right under section 2348 of the Revised Statutes. A violation of the law in this regard may subject the offending party to an action for damages for the trespass committed.

As to the circumstances under which nonmineral entrymen may, of right, use for domestic purposes upon the entered land deposits of coal belonging to the United States, see the statutes in the addenda.

To preserve a preference right of entry specified in the statute, the person or association of persons having acquired the same must present to the register of the proper land district, within 60 days from the date of actual possession and commencement of improvements upon the land, a declaratory statement therefor in all cases where the township plat has been filed. When the township plat is not on file at the date of such improvement, such declaratory statement must be presented within 60 days from the receipt of such plat at the district land office. (See, in this connection, par. 6, subdivisions (*a*) and (*c*).)

8. At any time prior to the issuance of patent protest may be filed against the patenting of the land applied for upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings, or upon any other ground sufficient to deny the issuance of patent.

Protests filed will be received and acted upon by the local officers in accordance with the rules of practice, and such rules will, as far as applicable, govern all cases and proceedings arising under the statutes providing for the sale of coal lands and deposits of coal. Government protests in connection with coal claims in forest reserves will be governed by the provisions of the joint regulations of September 4, 1915 (44 L. D. 360), and amendments thereto.

FEES OF REGISTERS AND RECEIVERS

9. In Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming registers and receivers are allowed by law a fee of $3 for each coal-land declaratory statement filed.

In Arkansas, North Dakota, and South Dakota registers and receivers are allowed by law a fee of $2 for each coal-land declaratory statement filed.

Declaratory-statement fees are earned irrespective of the action taken upon the declaratory statement.

Each applicant must at the time he presents his application to purchase, either in the exercise of a preference right or otherwise than in the exercise of a preference right, deposit with the receiver a filing fee of $10.

10. When it is sought to purchase otherwise than in the exercise of a preference right, the party will himself make oath to the following application, which must be presented to the register:

I, ——— ———, hereby apply, under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, to purchase the —— quarter of section ——, in township —— of range ——, in the district of lands subject to sale at the land office at ———, and containing —— acres; and I solemnly swear that no portion of said tract is in the possession of any other party or parties who has or have commenced improvements thereon for the development of coal; that I am twenty-one years of age, a citizen of the United States (or have declared my intention to become a citizen of the United States), and have never held, except ——— or purchased any lands under said act, either as an individual or as a member of an association; that I make this application in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever; and I do further swear that I am well acquainted with the characted of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not to my knowledge within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper; and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

11. Where a preference right of entry is sought to be preserved the required declaratory statement must be substantially as follows:

I, ——— ———, do hereby declare my intention to purchase, in the exercise of a preference right, under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the ——— quarter of section ——— of township ——— of range ——, in the district of the lands subject to sale at the district land office at ———; and I do solemnly swear that I am —— years of age and a citizen of the United States (or have declared my intention to become a citizen of the United States); that I have never, either as an individual or as a member of an association, held, except ——— or purchased any coal lands under the aforesaid provisions of the Revised Statutes; that I was in possession of, and commenced improvements on, said tract on the —— day of ———, A. D. 19—, and have ever since remained in actual possession continuously; that I have opened and improved a valuable mine of coal thereon, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows: (Here describe the nature and character of the improvements); and I do furthermore solemnly swear that I am well acquainted with the character of said described land and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver, or copper. So help me God.

12. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment; but the local officers will allow no party to make

final proof and payment except on special written notice to all others who appear on their records as claimants to the same tract. No notice will be given to parties whose declaratory statements have expired by limitation under the law.

13. A claimant who has failed to file declaratory statement within the 60-day period may, in the absence of intervening adverse rights in, or disposition of, the land involved, file declaratory statement at any time subsequent to such period and within the ensuing year, but a declarant will not be permitted to exercise a preference right of purchase after the expiration of the statutory period.

14. When it is sought to purchase, in the exercise of a preference right, the applicant must himself make the following affadivit, which must be presented to the register:

I, ——— ———, claiming under the provisions of the Revised Statutes of the United States relating to the sale of the coal lands of the United States, the preference right to purchase the —— quarter of section ——, in township —— of range ——, subject to sale at the district land office at ———, hereby apply to purchase and enter the same; and I do solemnly swear that I have not hitherto held, except ———, or purchased, either as an individual or as a member of an association, any coal lands under the aforesaid provisions of the law; that I have expended in developing coal mines on said tract, in labor and improvements, the sum of ——— dollars, the nature of such improvements being as follows: ——— ———; that I am now in the actual possession of said mines, and make the entry in good faith for my own benefit, and not, directly or indirectly, in whole or in part, in behalf of any person or persons whomsoever; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that said land contains workable deposits of coal; that there is not, to my knowledge, within the limits thereof any valuable vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposits of gold, silver, or copper. So help me God.

15. Where purchase and entry, whether in the exercise of a preference right or otherwise, is made by an association, each member thereof must subscribe and swear to the application or affidavit, the necessary changes being made to cover the joint possession and expenditure and the purchase and entry in their joint interest.

16. Each application, declaratory statement, and affidavit, forms whereof are given above, must be verified before the register or receiver or some officer authorized by law to administer oaths in the land district wherein the lands involved are situate. (Amendment of April 29, 1908, 36 L. D. 368.)

Necessary changes should be made in the application, declaratory statement, affidavit, and sworn statement where it is sought to acquire possession of or title to the coal deposits only.

17. Upon the filing of an application to purchase coal lands under the provisions of paragraphs 10 or 14 the applicant will be required, at his own expense, to publish a notice of said application in a newspaper nearest the lands, to be designated by the register, for a period of 30 days, during which time a similar notice must be posted in the local land office and in a conspicuous place on the land. The notice should describe the land applied for and state that the purpose thereof is to allow all persons claiming the land applied for, or desiring to show that the applicant's coal entry should not be allowed

for any reason, an opportunity to file objections with the local land officers.

Publication must be made sufficiently in advance to permit entry within the year specified by the statute.

After an application to purchase has been received no other person will be permitted to file on the land embraced therein under any public-land law until such application shall have been finally disposed of adverse to the applicant.

Notations should be made upon the tract books and other records of the local land offices of the filing of all coal declaratory statements and applications to purchase under the coal-land law, and said coal declaratory statements and applications to purchase should be properly indorsed so as to show the date of filing, the filing fees, and purchase money paid. All such coal declaratory statements and applications to purchase, except rejected unappealed coal declaratory statements and applications to purchase, should also be noted upon the tract books of the General Land Office.

The local land officers will forward with the returns for each month all coal declaratory statements and applications to purchase received by them during the month, whether protested or not, unless the same are rejected or suspended by them.

Rejected coal declaratory statements and applications to purchase must be held for appeal, and transmitted to the General Land Office with the returns for the month during which the appeal is filed, or for the month in which the time allowed for appeal expires. There must be attached to each rejected coal declaratory statement or application to purchase a " rejection slip " (Form 4–659), or copy of notice of rejection, properly signed, and the final disposition must be plainly noted on such rejection slip, or copy of notice or rejection, before the papers are transmitted with the monthly returns, together with all proofs of service.

Except as otherwise provided for in these regulations, suspended coal declaratory statements and applications to purchase must be forwarded with the returns for the month during which the suspension was removed.

When proper application to purchase coal land, whether at private entry under section 2347, Revised Statutes, or in the exercise of a preference right under section 2348, Revised Statutes, is filed and is not, for any reason, rejected or suspended by the local land officers, the register will, at the time such application to purchase is filed, prepare the proper notices for publication and forward copy thereof to the chief of field division or the proper forest officer, if the lands are in a national forest, and to the State, if in a school section. The register and receiver will thereafter forward the application to purchase, indorsed so as to show the date of filing and the amount of filing fee paid, with the returns for the month in which the application to purchase was filed, together with their written report as to the amount, if any, of purchase money paid (see 41 L. D. 417), and as to the action taken by them with reference to publication of notice, delivering copy of same to the chief of field division and other parties entitled to such copy. When the proofs are completed they must forward the same as provided by Circular No. 105,[a] as amended.

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[a] Circular No. 105 has been superseded by Circular No. 616, p. 48.

Contests should be duly noted upon the records as required by the circular of August 4, 1910 (39 L. D. 150–151).

The register and receiver will promptly report to the General Land Office, with appropriate recommendation, all coal-land applications wherein proof and payment are not made within the time required. See, in this connection, amended paragraph 18.

18. After the 30 days' period of newspaper publication has expired the claimant will furnish from the office of publication a sworn statement (including an attached copy of the published notice) that the notice was published for the required period, giving the first and last date of such publication, and his own affidavit, or that of some credible person having personal knowledge of the fact, showing that the notice aforesaid remained conspicuously posted upon the land sought to be patented during said 30 days' publication, giving the dates. The register shall certify to the fact that the notice was posted in his office for the full period of 30 days, the certificate to state distinctly when such posting was done and how long continued, giving the dates.

The claimant will be required within 30 days after the expiration of the period of newspaper publication to furnish the proofs specified in this paragraph, whereupon, and after receipt of report of chief of field division, as required in paragraphs 5 and 6 of circular approved April 24, 1907, the register and receiver will examine the proofs submitted, and if all be found regular and the application allowable will, by registered mail or personal service, so notify the applicant in writing, requiring him, within 15 days from receipt of notice of such allowance, to make payment of the purchase money unless it has theretofore been made. Should the specified proofs and purchase money be not furnished and tendered within the time prescribed, the local officers will reject the application subject to appeal. In the exercise of a preference right of purchase, the publication and posting of notice should be completed and the proof thereof filed within the year fixed by the statute.

Applicants to purchase under section 2347 of the Revised Statutes may at their option pay for the land at the time of filing their applications to purchase, or at any time thereafter, up to 15 days from and after receipt of notice from the register and receiver, as hereinbefore provided. The price to be paid will be that existent at date of actual payment of the purchase money by the applicants to the register and receiver, and a subsequent increase in the price will not affect their right to complete the applications, if proceedings be diligently prosecuted to final proof and entry. Where payments are not made at time of filing applications to purchase, but are deferred to a later date, and an increase in valuation has occurred subsequent to application to purchase, but before the actual tender and payment of the purchase money, the applicants will in all such cases be required to pay the new or higher price.

The foregoing is not applicable to coal-land claimants who have initiated claims under section 2348 of the Revised Statutes, by the opening and improving of a mine of coal on public land, and who have diligently prosecuted their claims to completion, as required by the law and regulations. Such claimants will be required to pay the price fixed and existent at the time of the initiation of their claims. (As amended December 30, 1912, 41 L. D. 417, 418.)

When the purchase price is paid the receiver will deposit the same to his official credit as "trust funds" (unearned moneys) and the same may be held until earned and applied or returned.

19. Of the following forms, the one appropriate to the sections of the Revised Statutes under which application is made should be used for publication of all notices of application to enter coal lands:

[Amendment of July 9, 1912, 41 L. D. 100, 101]

Notice for publication.

COAL ENTRY.

(Sec. 2347, R. S.)

——— ——— Land Office,
——— ———, 19—.

Notice is hereby given that ——— ———, of ———, county of ———, State of ———, has this day filed in this office his application to purchase, under the provisions of section 2347, U. S. Revised Statutes, the ——— of section No. ———, township No. ———, range No. ———.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by the applicant, should file their affidavits of protest in this office during the 30-day period of publication immediately following the first printed issue of this notice, otherwise the application may be allowed.

——— ———, *Register.*

Notice for publication.

COAL ENTRY.

(Secs. 2348–2352, R. S.)

——— ——— LAND OFFICE,
——— ———, *19*———.

Notice is hereby given that ——— ———, of ———, county of ———, State of ———, who, on the ——— day of ———, 19———, filed in this office his coal declaratory statement for the ——— of section No. ———, township No. ———, range No. ———, has this day filed in this office his application to purchase said land under the provisions of sections 2348 to 2352, United States Revised Statutes.

Any and all persons claiming adversely the lands described, or desiring to object for any reason to the entry thereof by the applicant, should file their affidavits of protest in this office during the 30-day period of publication immediately following the first printed issue of this notice.

——— ———, *Register.*

The necessary changes should be made in the notice in all cases where the coal deposits only are sought to be entered.

20. An application for cash entry will be subject to any valid adverse right which may have attached to the same land pursuant to section 2348, Revised Statutes.

21. Qualified persons or associations who are lawfully in possession of tracts of coal lands which are still unsurveyed may, under sections 2401, 2402, and 2403, Revised Statutes, as amended by the act of August 20, 1894, apply to the surveyor general for the survey of the township or townships, or portions thereof, embracing the lands claimed, to be specified as nearly as practicable. Each such application must be accompanied by the affidavit of the applicant or applicants, duly corroborated by at least two competent persons, setting forth the qualifications of the former as claimant or claimants

of the land, the facts constituting their possession, the character of the land, and such other facts in the case as are essential in that connection. If the surveyor general approves the application he will thereupon transmit it to the General Land Office with the affidavits and his report.

CLAY TALLMAN,
Commissioner.

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

(Addenda containing acts and instructions omitted.)

[Reported, 41 L. D. 528]

CLASSIFICATION AND VALUATION OF PUBLIC COAL LANDS

(NOTE.—The classification and valuation of public coal lands are made by the U. S. Geological Survey. Notice thereof is sent to the proper local officers by the General Land Office.)

REGULATIONS, FEBRUARY 20, 1913

I. CLASSIFICATION

1. Land shall be classified as coal land if it contains coal having—

(*a*) A heat value of not less than 8,000 B. t. u. on an air-dried, unwashed or washed, unweathered mine sample.

(*b*) A thickness of or equivalent to 14 inches for coals having a heat value of 12,000 B. t. u. or more, increasing 1 inch for a decrease from 12,000 to 11,000 B. t. u., 1 inch for a decrease from 11,000 to 10,500 B. t. u., 1 inch for each decrease of 250 B. t. u. from 10,500 to 10,000, and 1 inch for each decrease of 100 B. t. u. below 10,000.

(*c*) A depth below the surface for a bed of coal 6 feet or more thick of not more than 100 feet for each 300 B. t. u. or major fraction thereof, and for a bed of minimum thickness for that coal a depth of not more than 500 feet, and for beds of any thickness between the minimum and 6 feet a depth directly proportional to that thickness within these limits, provided that, if the coal lies below the depth limit but within a horizontal distance from the surface not exceeding 10 times the depth limit, or if its horizontal distance from the foot of a possible shaft (not deeper than the depth limit) plus 7.5 times the depth of such shaft does not exceed 10 times the depth limit, the land shall be classified as coal land; provided, further, that the depth limit shall be computed for each individual bed, except that where two or more beds occur in such relations that they may be mined from the same opening the depth limit may be determined on the group as a unit, being fixed at the center of weight of the group, no coal that is below the depth limit thus determined to be considered.

2. Classification shall be made by quarter quarter sections or surveyed lots. (As amended February 16, 1915, 43 L. D. 520.)

II. VALUATION

3. For purposes of valuation the price per ton for a noncoking, nonanthracite coal 6 to 10 feet thick shall be one-tenth of a cent for each 1,250 B. t. u.:

(*a*) Provided that the price per ton may be increased by not more than 100 per cent if the coal is coking, smokeless, or anthracitic or has other enhancing qualities; or it may be decreased for high sulphur or ash, friability, or nonstocking or other qualities that reduce the value; and

(*b*) Provided, further, that if the coal in one bed is over 10 feet thick the price on each foot above 10 feet shall be reduced 1 per cent for each such foot (thus the reduction will be 1 per cent on the eleventh foot, 2 per cent on the twelfth foot, and so on); or if the coal is less than 6 feet thick the price shall be reduced by multiplying the normal value by $\frac{4+t}{10}$, where t equals thickness in feet; and

(*c*) Provided that where the thickness of any bed varies irregularly its computed thickness (CT) over any area shall be equal to the average of the measurements (AM) less the sum of the differences between each measurement and the average of the measurements (SD) divided by the sum of the measurements (S):

$$CT = AM - \frac{SD}{S}$$

4. The value of any acre within 15 miles of a railroad in operation shall be determined at the rate per ton prescribed above on an estimated recoverable tonnage of 1,000 tons to the acre-foot:

Provided that if the coal is in several beds having an aggregate thickness of more than 10 feet if beds less than 6 feet thick are considered at the reduced thickness as prescribed above, the value due to each foot above 10 feet shall be reduced 1 per cent for each such foot (as in computing the price per ton on a single thick bed) up to a thickness of 80 feet, above which any additional thickness shall be valued at 30 per cent of the normal value.

5. This price shall be decreased one-half if the land is more than 15 miles from a railroad in operation, or if it is within that limit but inaccessible owing to topographic conditions; but no land shall be valued at less than the legal minimum price, nor shall the price of any land exceed $300 an acre except in districts which contain large coal mines and where the character and extent of the coal are well known.

6. Within the above restrictions a graded allowance shall be made for increasing depth, and allowance may be made for any special conditions enhancing or diminishing the value of the land for coal mining.

7. If only a part of a smallest legal subdivision is underlain by coal the price per acre shall be fixed by dividing the total estimated coal values by the number of acres in the subdivision, but this price shall be not less than the minimum provided by law.

8. When lands which were at the time of classification more than 15 miles from a railroad are brought within the 15-mile limit by the

beginning of operation of a new road, all values given in the original classification shall be doubled by the register and receiver.

9. Review of classification or valuation may be had only on application therefor to the Secretary, accompanied by a clear and specific statement of conditions not existing or not known to exist at the time of examination.

Circular No. 362

COAL PROSPECTORS' BONDS

Department of the Interior,
General Land Office,
Washington, November 7, 1914.

Registers and Receivers, United States Land Offices.

Sirs: You are advised that, under date of October 26, 1914, the department amended paragraph 2 of subdivision 6 of departmental instructions, dated September 8, 1910[b] (39 L. D. 179, 473), under the act of June 22, 1910 (36 Stat. 583), so as to read as follows:

> As a condition precedent to the exercise of the right mentioned in this act to prospect for coal, the person desiring so to prospect must file in the office of the Commissioner of the General Land Office, for submission to the Secretary of the Interior for his approval, a bond or understaking to indemnify the nonmineral claimant in lawful possession under this act from all damages that may accrue to the latter's crops and improvements on such lands by reason of such prospecting, the right to prospect to date from receipt of notice of approval of the bond. There must be filed with such bond evidence of service of a copy thereof upon the nonmineral claimant. The bond must be executed by the prospector as principal, with two competent individual sureties or a corporate surety that has complied with the provisions of the act of August 13, 1894, (28 Stat. 279), as amended by the act approved March 23, 1910, (36 Stat. 241), in the sum of $1,000, as per form hereto annexed. Except in the case of a bond given by a qualified corporate surety, there must be filed therewith affidavits of justification by the sureties, and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster, as to the identity, signatures, and financial competency of the sureties. Coal declaratory statements for and applications to purchase the coal deposits in lands entered, selected, or withdrawn under the reclamation act, as provided in section 2 of act, will be received and filed at any time after such entry or selection has been received and allowed of record or such withdrawal has become a matter of record in your office; coal declaratory statements for and applications to purchase the coal deposits in those lands embraced in nonmineral entries, selections, or locations made in good faith, described in, and protected by, the proviso in section 1 of the act, will be accepted and filed after it shall have been determined and become a matter of record in your office that such nonmineral entryman, selector, or locator shall receive the limited patent prescribed in the act: *Provided always*, That such lands, or the coal deposits therein, have then been restored to disposition under the coal-land laws and the regulations in force.

You are further advised that on and after December 1, 1914, any coal prospector's bond presented to your office should have attached the proper stamps, called for by the recent act to increase the internal revenue, and for other purposes, approved October 22, 1914 (38 Stat. 754).

Very respectfully,

D. K. Parrott,
Acting Assistant Commissioner.

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[b] See p. 1405.

Circular No. 384

TRANSMITTAL OF COAL PROSPECTORS' BONDS

Department of the Interior,
General Land Office,
Washington, February 27, 1915.

Registers and Receivers, United States Land Offices.

Sirs: Hereafter when coal prospectors' bonds, provided for by the act of June 22, 1910 (36 Stat. 583), are filed in your offices, you will, instead of the prevalent practice of delaying their transmittal until transmitted in the subsequent monthly returns with the coal declaratory statement or other filing to which they are incident, promptly examine the same, and if they satisfy the requirements of Circular No. 362, of November 7, 1914, transmit them to this office by special letter. If they do not satisfy these requirements, you will take appropriate steps in order that they may be completed or corrected.

If a coal declaratory statement be filed in addition to the bond, it may be retained in your office and may be sent up with the monthly returns, as at present, but in the letter transmitting the bond the filing of the declaratory statement should be noted.

Very respectfully,

Clay Tallman, *Commissioner.*

COAL PERMITS, LEASES, AND LICENSES

[Reported, 47 L. D. 489]

Circular No. 679[1]

COAL MINING LEASES, PERMITS, AND LICENSES (EXCLUSIVE OF ALASKA)

Department of the Interior,
General Land Office,
April 1, 1920.

Register and Receiver, United States Land Offices.

Sirs: Under authority of the act of Congress approved February 25, 1920 (41 Stat. 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," the following rules and regulations are prescribed for the administration of the provisions of said act relative to coal:

1. *Methods of disposition.*—Sections 2 to 8, inclusive, of said act authorize the Secretary of the Interior to—

(1) Divide into leasing units and award leases of coal lands and coal deposits owned by the United States;

(2) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits; and

(3) Issue limited licenses or permits to prospect for, mine, and take for use coal from public lands.

2. *Lands to which applicable.*—The act applies to the coal lands, or the deposits of coal, classified and unclassified, owned by the United States, including those in national forests, and including the coal deposits reserved under laws authorizing entries and patents with reservation to the United States of such deposits; also to coal lands in ceded or restored Indian reservations the proceeds from the disposition of which are the property of the United States. It does not include land or deposits in (*a*) national parks, (*b*) forests created under the act of March 1, 1911 (36 Stat. 961), known as the Appalachian forest reserve act, (*c*) lands in military or naval reservations, (*d*) Indian reservations, nor (*e*) ceded or restored Indian lands, the proceeds from the disposition of which are credited to the Indians.

All permits or leases for the exploration for or development of coal deposits under this act within the limits of national forests or other reservations or withdrawals to which this act is applicable shall be subject to and contain such conditions, stipulations, and reservations as the Secretary of the Interior shall deem necessary for the protection of such forests, reservations, or withdrawals, and the uses and purposes for which created.

3. *Who may take.*—Leases and prospecting permits may be issued to citizens of the United States, associations of citizens, corporations

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[1] Amended by Circulars Nos. 809, p. 382; 922, p. 383; and 1193, p. 389.

organized under the laws of the United States or any State or Territory thereof, and to municipalities. Limited licenses or permits for the mining of coal may be issued to citizens, associations of citizens, and municipalities. Leases may also be issued to operating railroad companies to mine coal for their own use for railroad purposes, subject to certain restrictions found in section 2 of the act.

4. *Equitable rights.*—Equitable rights of claimants who, prior to the date of the act, occupied and improved coal lands in good faith may be recognized in awarding leases of such lands, in which cases the rents and royalties, not less than the minimum provided for leases under the act, will be fixed by the Secretary of the Interior.

5. *Repealing and saving clause.*—Section 37 of the act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the act, including lands and deposits described in joint resolution of August 1, 1912 (37 Stat. 1346), may be disposed of only in the manner provided in the act " except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery."

As to coal, those claims initiated under the preexisting law may go to patent, which, at the date of the act, were covered by valid coal declaratory statements or applications to purchase which are timely followed up and perfected in accordance with the controlling coal land laws (secs. 2348 to 2352, Revised Statutes), and the regulations thereunder (circular No. 557) ; likewise, one who has opened and improved a mine of coal on unsurveyed lands may proceed to perfect his claim within sixty days from the filing of the official plat of survey, pursuant to section 2349, Revised Statutes.

6. *Fees and commissions.*—(*a*) For receiving and acting upon each application for a permit, lease, or license filed in the district land office in accordance with these regulations, there shall be paid a fee of $2 for every 160 acres, or fraction thereof, in such application, but such fee in no case to be less than $10, the same to be paid by the applicant and considered as earned when paid, and to be credited in equal parts on the compensation of the register and receiver within the limitations provided by law.

(*b*) Registers and receivers shall be entitled to a commission of 1 per cent of all moneys received in each receiver's office, to be equally divided between the register and receiver; such commission will not be collected from the applicant, lessee, or permittee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the act, as provided in section 35 thereof; also that such commissions will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

I. COAL LEASES

7. *Leasing units.*—Under section 2 of the act, no coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be created by the Secretary of the

Interior (*a*) pursuant to the petition of a qualified applicant, that is, qualified to take a lease under the act, or (*b*) on his own initiative.

Leasing units will not exceed 2,560 acres in area. All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation, and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

Such leasing units will comprise contiguous tracts, except in cases where it appears that noncontiguous tracts can be practically worked on a single mine or unit.

Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

8.[2] *Minimum development.*—An actual bona fide expenditure for mine operation, development, or improvement purposes of the amount determined by the Secretary, and stated in the lease offer hereinafter referred to, is adopted as the minimum basis for granting leases, with the requirement that not less than one-third of the required investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. A bond executed by the lessee, with approved corporate surety, will be required to be furnished, in the sum of $10,000, conditioned upon the expenditure of the specified amount of investment. After said investment has been made a similar bond in the sum of $5,000, conditioned upon compliance with the terms of the lease, will be required.

9. *Petitions for leasing units.*—Any person, association of persons, or corporation qualified to take a lease may file in the proper district land office a petition to divide coal lands into leasing units for purpose of lease. Such petition should set forth—

(*a*) Name and post-office address of petitioner.

(*b*). Statement showing qualifications of petitioner to take a lease under the act; proof of citizenship to be made by affidavit if native born; if naturalized, by certified copy (special form for land cases) of certificate thereof if copy is not already on file; if a corporation, by certified copy of the articles of incorporation; if a municipality, a showing of (1) the law or charter and procedure taken by which it became and exists a legal body corporate, (2) that the taking of a permit or lease is authorized under such law or charter, and (3) that the action proposed has been duly authorized by the governing body of such municipality; and the applicant must make affidavit that he or it is not disqualified to take a permit or lease under the provisions of section 27 of the act. Corporations must also submit a showing as to the residence and citizenship of its stockholders.

(*c*) Description of the land, by legal subdivisions if surveyed, or if not surveyed, by metes and bounds or natural monuments, with such particularity as to render possible its identification with certainty. Where possible, description of the land by the approximate subdivisions of the future survey should be given.

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[2] See amendments, pp. 382, 383, and 389.

(*d*) Statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities.

(*e*) Character and extent of the coal deposits so far as known.

(*f*) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(*g*) Maximum royalty petitioner is willing to pay if awarded lease of the land described in petition, or any specific portion thereof, together with a statement by or on behalf of petitioner that, in the absence of any better bid for lease of said land, he will, within 30 days from auction of lease, execute a lease therefor and comply with its terms in good faith.

10. *Action by local office.*—Registers and receivers will assign current serial numbers to such petitions, promptly note the petitions on their records, and transmit them to the General Land Office with report of the record status of the land described.

After receipt of such a petition, no filing for any of the land described therein will be accepted until so directed, except other petitions for diving into leasing units.

11. *Action on petition.*—If the terms offered by the petitioner for lease of the land or deposits are considered tentatively acceptable as minimum terms for such land or deposits, examination, classification, and blocking the land into leasing unit or units will be directed. If it be found thereby that the land desired by the petitioner constitutes a suitable unit, and the terms offered by him are considered acceptable therefor, the land or deposits will be advertised for lease to the bidder offering the highest bonus for such lease on the same terms. But, if it be found as a result of such examination and blocking out, that the land does not constitute an acceptable leasing unit, or if the royalty offered, or investment contemplated, is considered inadequate, the petitioner will be so advised, and also of the form and area in which the land or deposits will be leased and the minimum terms on the basis of which lease will be offered for sale, whereupon the petitioner will be permitted to amend his offer to meet the terms required. If the offer is so amended, the leasing units will be advertised for lease to the bidder offering the highest bonus for such lease; but if no bidder offers a bonus for such lease, same will be awarded to the petitioner. In case the petitioner fails to make a satisfactory minimum lease offer, the leasing unit may or may not be offered for lease, in the discretion of the Secretary of the Interior.

12. *Notice of offer.*—When any coal lands are divided into leasing tracts, the appropriate district land office will be advised thereof, whereupon the register will publish a notice for a period of 30 days in a newspaper of general circulation in the county in which the lands or deposits are situated, of the offer of the land for lease, and the date and hour on which bids will be received at his office, such date to be not earlier than the last day of publication. The

notice will describe the land, state the amount of royalty and rental to be charged, and the minimum investment required, and that the sale of lease will be made at public auction at the time fixed to the qualified bidder offering the highest bonus for the privilege of leasing the land on the terms set forth. A copy of the notice will also be posted in the land office during publication thereof. Publication of the offer will be at the expense of the Government.

All bidders at any public sale of leases are warned against committing any act by intimidation, combination or unfair management, to hinder or prevent bidding thereat, in violation of section 59 of the Criminal Code of the United States, approved March 4, 1909.

13. *Auction of lease.*—At the time fixed in the notice, the register or receiver will, by public auction at his office, offer the land or deposits for lease on the terms and conditions fixed in the notice to the qualified bidder of the highest amount offered as a bonus for the privilege of leasing the land, subject to the approval of the Secretary of the Interior. The successful bidder must deposit with the receiver on the day of sale a certified check or cash, for one-fifth of the amount of his bid, such sum to be deposited by the receiver in his account "Trust funds—Unearned money."

14. *Right to reject bids.*—The right is reserved by the Secretary of the Interior to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned.

15. *Action by bidder.*—The successful bidder will be allowed 30 days from date of auction within which (*a*) to file in the district land office a lease, duly executed by him in triplicate in the form herein prescribed, (par. 18); (*b*) to file evidence of qualifications as prescribed by paragraph 9 (*b*) hereof, unless such evidence has theretofore been filed; (*c*) to file the bond required by section 2 (*b*) of the lease, or U. S. bonds in lieu thereof under the act of February 24, 1919 (40 Stat. 1148); (*d*) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease, together with the required filing fee of $2 for each 160 acres of land, or fraction thereof, but in no case less than $10.

16. *Action by district officers.*—At the end of the 30 days allowed the successful bidder, or sooner, if the foregoing be complied with by him, the local offices will forward by special letter all papers with full report of action taken. In case of default, the amount deposited by the bidder will be forfeited, and disposed of as other receipts under this act.

17. *Modifications of leases.*—Under section 3 of the act, where a lease has been issued, modifications may be secured to include therein additional contiguous coal lands or coal deposits, not exceeding a total of 2,560 acres in the lease. Under section 4 of the act, upon satisfactory showing by the lessee that all of the workable coal within a tract covered by the lease will be exhausted, worked out, or removed within three years thereafter, additional tracts may be leased, which, including the lands or deposits remaining in the lease, shall not exceed 2,560 acres, such lease of additional lands to be made under similar procedure and on the same conditions as original leases.

18. *Form of lease.*—Leases hereunder will be in substance as follows:

U. S. Land Office at _______
Serial No. ________________

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR

MINING LEASE OF COAL LANDS UNDER ACT OF FEBRUARY 25, 1920

This indenture of lease, entered into, in triplicate, this ______ day of ______ A. D. 19__, by and between the United States of America, acting in this behalf by ______ Secretary of the Interior, party of the first part, hereinafter called the lessor, and ______ of ______ party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress, approved February 25, 1920 (41 Stat. 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter called the "act."

WITNESSETH:

That the lessor, in consideration of the rents and royalties to be paid and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the coal in, upon, or under the following-described tracts of land, situated in the State of ______, to wit: ______, containing ______ acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

SECTION 1. That the lessor expressly reserves—

(1 a) The right to permit for joint or several use such easements or rights of way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in said act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(1 b) The right to lease, sell, or otherwise dispose of the surface of said lands or any part thereof under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the mining and removal of the coal therein, and to lease other mineral deposits in the lands, under the provisions of said act.

(1 c) Full power and authority to carry out and enforce all the provisions of section 30 of said act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly; and to safeguard the public welfare.

SEC. 2. The lessee in consideration of the lease of the rights and privileges aforesaid hereby covenants and agrees as follows:

(2 a) To invest in actual mining operations, development, or improvements upon the land leased, or for the benefit thereof, the sum of ______ dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during such year.

(2 b) To furnish a bond in the sum of $10,000, conditioned upon the expenditure of the amount specified in (2 a) hereof, and after said investment has been made, a similar bond in the sum of $5,000, conditioned upon compliance with the terms and provisions of this lease.

(2 c) To pay as an annual rental for each acre or part thereof covered by this lease the sum of 25 cents per acre for the first year, payment of which amount is hereby acknowledged, the sum of 50 cents per acre per year for the second, third, fourth, and fifth years, and $1 per acre for the sixth and each

succeeding year during the life of this lease, all such annual payments of rental to be made to the receiver of the United States Land Office of the district in which said land is situated, on the anniversary of the date hereof, and to be credited on the first royalties to become due hereunder during the year for which said rental was paid.

(2 d) To pay to such receiver a royalty of ______ cents on every ton of 2,000 pounds of coal mined during the first 20 years succeeding the execution of this lease. Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the coal is mined.

(2 e) To determine accurately the weight of all coal mined from the leased premises, and to accurately enter the weight or weights thereof in due form in books to be kept and preserved by the lessee for such purpose.

(2 f) To furnish quarterly, within 30 days after the expiration of the quarter, a written report covering such quarter, certified under oath by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the number of tons of 2,000 pounds of coal mined during the quarter, the character and quality thereof, amount of coal and products and by-products thereof disposed of and price received therefor, amount of coal and its products in storage or held for sale, and amount used in operations under this lease.

(2 g) Also to furnish annually, and at such other times as the Secretary of the Interior may require, in the manner and form prescribed by the Secretary of the Interior, plat, map, or tracings showing all development work and improvements upon the leased lands, and other related information, with a report as to all buildings, structures or other works placed in or upon the leased lands, a statement as to the amount and grade of coal produced and sold, and amount received therefor by operations hereunder, and, if a corporation, the amount of capital stock and list of its stockholders.

(2 h) To keep at the mine office clear, accurate, and detailed maps, on a scale not more than 200 feet to the inch, in the form of horizontal projections on tracing cloth, of the workings in each coal bed in each separate mine on the leased lands, a separate map to be made for each such bed, and for the surface immediately over the underground workings, and to be so arranged with reference to a public land corner that the maps can be readily superimposed.

Each map of the workings in any coal bed shall show the thickness of the coal and of partings, and the dip and strike of each bed at intervals of 500 feet or less; the location of all openings connecting such bed with the workings in any other bed, or with any adjacent mine, or with the surface; the location of all entries, gangways, rooms, or breasts, and all other mine openings, shafts, airways, appliances, and devices, constructed or placed in the mine or any of the workings thereof; and such maps shall also show the elevation relative to sea level or a Government survey corner of the principal points of the various beds and workings.

Blue prints or reproductions in duplicate of the maps required as aforesaid shall be furnished the lessor when made, and supplemental prints or reproductions in duplicate furnished on or before the first day of each succeeding year, showing the extensions, additions, and changes since the last map or supplement was submitted. All mine progress maps kept by the lessee shall at all times be subject to examination by lessor.

(2 i) That, beginning with the fourth year of the lease, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, the lessee shall mine and pay a royalty on not less than ______ tons of coal per year, unless on application and showing made, operations shall be suspended for not exceeding six months at any one time, pursuant to section 7 of the act; or unless the lessee shall pay the royalty less rent, on such minimum amount of coal, for one year in advance, in which case operations may be suspended for that year.

(2 j) That the lessee shall not assign this lease or any interest therein, nor sublet any portion of the leased premises without the written consent of the lessor being first had and obtained.

Sec. 3. It is mutually understood and agreed that the lessor shall have the right to readjust and fix the royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof, and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period, but in case the lessee be dissatisfied with the rate of royalty or other terms and conditions so fixed, he may terminate this lease in the manner and under the conditions provided in sections 6 (b) and 6 (c) hereof.

SEC. 4. This lease is made subject to the following provisions, which the lessee accepts and covenants faithfully to perform and observe, unless the laws of the State where the leased land or deposits are situated otherwise provide, in which case such State laws control:

(4 a) The lessee shall carry out and observe regulations prescribed by the Secretary of the Interior and in force at the date hereof relative to (1) reasonable diligence, skill, and care in the operation of said property in accordance with approved methods and practices; (2) the prevention of undue waste; (3) the safety and welfare of miners; and (4) insuring the fair and just weighing or measurement of the coal mined by each miner.

(4 b) And also shall pay all miners and other employees, both above and below ground, at least twice each month in lawful money of the United States, and shall permit such miners and other employees full and complete freedom of purchase, but with a view to increasing safety this provision shall not apply to the purchase of explosives, detonators, or fuses; and shall not require or permit miners or other employees, except in case of emergency, to work underground for more than eight hours in any one workday, and shall not employ any boy under the age of 16 years, or any girl or woman without regard to age in any mine below the surface.

SEC. 5. And the lessee also expressly agrees that all mining and related operations shall be subject to the inspection of authorized representatives of the lessor, and that such representatives, with all proper and necessary assistants, may at all reasonable times enter into and upon the leased lands and survey and examine same and all surface and underground improvements, works, machinery, equipment, and operations.

(5 a) And also shall permit the lessor to examine all books and records pertaining to operations under this lease, and to make copies of and extracts from any or all of same, if desired.

(5 b) And also shall permit the lessor or its lessees or transferees, with the approval of the lessor, to make and use upon or under the leased lands any workings necessary for freeing any other mine from water or gas, or extinguishing fires, causing as little damage or interference as possible to or with the mine or mining operations of the lessee hereunder: *Provided*, That any such use by a transferee or another lessee shall be conditioned upon the payment to the lessee hereunder of the amount of actual damages sustained thereby and adequate compensation for such use.

(5 c) And also shall, at the termination of this lease, as the result of forfeiture thereof, pursuant to paragraph (6 d), deliver up to the lessor the lands covered thereby, including all fixtures, machinery, improvements, and appurtenances, other than strictly personal property, situate on any of said lands, in good order and condition, so as to permit of immediate continued operation to the full extent and capacity of the leased premises.

SEC. 6. It is further mutually understood and agreed as follows:

(6 a) That the lessor may, in writing, waive any breach of the covenants and conditions contained herein, except such as are required by the act, but any such waiver shall extend only to the particular breach so waived, and shall not limit the rights of the lessor with respect to any furture breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

(6 b) The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease upon payment of all rents, royalties, and other debts due and payable to the lessor and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; and the lessee may with like consent surrender any legal subdivision of the area included within the lease; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered hereby.

(6 c)[3] That on the termination of this lease, pursuant to the last preceding paragraph, the lessor, his agent, licensee, or lessee shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all buildings, machinery, equipment, and tools, placed by the lessee in or on the land leased hereunder, save and except all underground timbering, and such other supports and structures as are necessary for the preservation of the mine, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid, shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party thereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings or other property shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said timbering and other supports and structures, as are necessary for the preservation of the mine, as aforesaid.

(6 d) If the lessee shall fail to comply with the provisions of the act or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at date hereof, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act, but this provision shall not be construed as depriving the lessor of any legal or equitable remedy which the lessor might otherwise have.

Sec. 7. It is further covenanted and agreed that, should the lessee fail to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of lessee.

Sec. 8. It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. It is also further agreed that no member of or delegate to Congress, or resident commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By ______________________________
Secretary of the Interior, Lessor.

____
____
Lessee.

Witnesses.
____
____
____
____

II. COAL PROSPECTING PERMITS

19. *Character of lands.*—Permits are authorized by section 2 of the act to be issued to qualified applicants to prospect unclaimed,

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[3] See amendment, p. 383.

undeveloped lands where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

20. *Area.*—Permits will be issued for tracts of not exceeding 2,560 acres of contiguous lands, or, if not contiguous, in reasonably compact form, considering the reasons for not including a contiguous area. Where lands included in a permit have been or may be disposed of with reservation of the coal deposits, a permittee must make full compliance with the law under which such reservation was made, reference being made to the acts of March 3, 1909 (35 Stat. 844); June 22, 1910 (36 Stat. 583); December 29, 1916 (39 Stat. 862), and other laws authorizing such reservations.

21. *Rights conferred.*—A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

22.[4] *Application for permit.*—Applications for permits shall be filed in the proper district land office, and, after due notation thereof on the records, forwarded to the General Land Office with report of status of the land affected. No specific form of application is required and no blanks will be furnished, but it should cover, in substance, the following points:

(*a*) Applicant's name and address;

(*b*) Proof of citizenship and qualifications to take a lease as required by paragraph 9 (b) hereof;

(*c*) Description of land for which a permit is desired by legal subdivision if surveyed, and by metes and bounds and such other description as will identify the land if unsurveyed. If unsurveyed, a survey sufficient to identify more fully and segregate the land may be required before permit is granted;

(*d*) Condition of coal occurrences, so far as determined; description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal;

(*e*) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted;

(*f*) Brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

The application must be under oath of the applicant, or if a corporation, of one of its officers theretofore duly authorized.

23. *Form of permit.*—On receipt of the application, if found sufficient and the lands subject thereto, a permit will be issued, of which the district land office will be advised. Permits will be in substantially the following form:

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[4] See added paragraph (g), pp. 384 and 389.

U. S. Land Office at--------
Serial No-----------------

THE UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR

COAL PROSPECTING PERMIT

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain, approved February 25, 1920 (41 Stat. 437), has granted and does hereby grant a permit to ------ of the exclusive right for a period of two years from date hereof to prospect for coal the following described lands: ------ but for no other purpose, under the provisions of said act and upon the following express conditions, to wit:

1. To begin prospecting work within 90 days from date hereof and to diligently prosecute the same during the period of such permit in accordance with the following plan: ------

2. To remove from said premises only such coal or other material as may be necessary to prospecting work, and to keep a record of all coal mined and disposed of, payment of a royalty thereon of 25 cents per ton of 2 000 pounds to be made to the receiver of the district land office not later than during the calendar month succeeding that during which such coal was disposed of.

3. To afford all facilities for inspection of the prospecting work on behalf of the Secretary of the Interior, and to make report on demand of all matters pertaining to the character, progress, and results of such work.

4. To observe such conditions as to the use and occupancy of the surface of the land as provided by law, in case any of said lands shall have been or may be entered or patented with a reservation of the coal deposits to the United States.

Expressly reserving to the Secretary of the Interior the right to permit for joint or several use such easements or rights of way upon, through or in the land embraced herein as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in said act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes; also reserving to the United States the right to lease, sell, or otherwise dispose of the surface of said lands under existing law or laws hereafter enacted in so far as said surface is not necessary for the use of the permittee in prospecting hereunder, and further reserving the right and authority to cancel this instrument for failure of the permittee to comply with any of the conditions hereof, after 30 days' notice of the reasons for such cancellation.

Valid existing rights acquired prior hereto on the lands described herein will not be adversely affected hereby.

Dated this ------ day of ------, 19--.

-------------------------------,
Secretary of the Interior.

24. *Leases to permittees.*—A qualified permittee who has shown, within the period of the permit, that the land included therein contains coal in commercial quantities, will be entitled to a lease for such land, or part thereof as the permittee may desire, upon due application and publication of notice thereof. The application for lease should be filed in the proper district land office before the expiration of the period of the permit. An application for lease under this section should describe the land desired and set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit. Such leases will be granted without competitive bidding,

on rents and royalties to be fixed by the Secretary of the Interior, and otherwise substantially in the form of lease provided in section 18 of these regulations.

III. LIMITED LICENSE TO MINE COAL

Under section 8 of the act, the Secretary of the Interior is authorized to issue limited licenses to individuals and associations of individuals to mine and take coal for their own use, but not for sale, without the payment of any rent or royalty, and such licenses may be issued to municipalities to mine and dispose of coal without profit to their residents " for household use." Attention is called to the fact that, under this section, an individual or association of individuals may mine and take coal under such a license for his or their own strictly local domestic needs for fuel, whatever such use may be, but in no case for barter or sale; while a municipality may under such a license supply coal to its residents for household use only, which excludes mining coal by a municipality either for its own use or use of its residents other than for household purposes, thus barring factories, stores, heating and lighting plants, and other business establishments.

25. *Area and duration.*—(*a*) A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less; and may be revoked at any time, and such license will expire by limitation at the end of two years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the two-year period.

(*b*) Licenses to municipalities are limited as to area by the provisions of the act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 for a municipality of not less than 100,000, and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of four years from date of issuance, unless renewed; but every such licensee must make to the Commissioner of the General Land Office an annual report of all operations conducted under such license.

26. *Application for license.*—Application for such limited license must be filed in duplicate in the district land office having jurisdiction over the land, in the form herein provided. A municipality must file with the application a showing of (1) the law or charter and procedure taken by which it became and exists a legal body corporate, (2) that the taking of a license is authorized under such law or charter, and (3) that the proposed action has been duly authorized by the governing body of the municipality. Appropriate serial number will be assigned to such application, notation made thereof on the office records, and the application promptly forwarded to the General Land Office with report of status of the lands.

27. *Form of application—License.*—An application in substantially the following form, approved by the Secretary of the Interior,

will constitute the license; one copy will be retained for the land office records and the other returned to the licensee. Blank forms of applications will be printed and available in the district land offices.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR

U. S. Land Office at________
Serial No.________________

APPLICATION FOR LICENSE TO MINE COAL UNDER SECTION 8 OF THE ACT OF FEBRUARY 25, 1920

______________________________,
__________________ 19—.

The COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

SIR: The undersigned __________ of ________, hereby appl for a license to prospect for, mine, and remove coal from the following described land __________ containing approximately __________ acres, situated within the __________ land district, State of __________, and in support of this application make the following representations as to qualifications to receive a license____
____

The purpose for which the coal mined hereunder is to be used is: __________ for which approximately __________ tons are required annually.

In consideration of the granting of the license applied for, the applicant hereby agrees to the following express terms and conditions, to wit:

1. That only so much of the surface of the land as may be necessary to prospecting and mining operations hereunder shall be used or occupied by said licensee, and the right is reserved by the Secretary of the Interior to dispose of any portion of said land not already disposed of with reservation of the coal deposits under the act of June 22, 1910 (36 Stat. 583), or other acts authorizing such disposition, such licensee to observe in prospecting and mining operations hereunder all provisions of the laws under which any part of the land has been or may hereafter be disposed of with reservation of the coal deposits therein.

2. That all prospecting, mining, and removal of coal hereunder shall be conducted in accordance with approved methods and practice, considering the extent of the operation; that no underground working shall be abandoned until all the available coal is taken therefrom; that due provision shall be made for the prevention of fires in the mine or mines opened hereunder and for the safety of the miners or other workmen engaged therein, and reasonable diligence, skill, and care shall be exercised in all mining operations hereunder; and shall carry out and observe any regulations prescribed by the Secretary of the Interior, and in force at the date hereof, relative to the foregoing provisions in this paragraph; and on termination the licensee to leave the premises in a safe condition for future mining operations.

3. That the license is granted for a period of __________ years from the date hereof, subject to an extension at the end of such period for a like term of years upon application for such extension and satisfactory showing as to the mining of coal from the land, giving the amount of coal mined, the disposition made thereof, the condition of the mine, and the amount of coal remaining in the land which can be mined.

4. That the right is reserved to cancel and recall this license at any time, after 30 days' notice of such purpose, for failure to mine and use the coal deposits in accordance with the conditions and provisions of said act, or for committing waste or other unnecessary damage to the land or the deposits therein, for abandonment or nonuse or for other violation of the terms of this license; that in case this license is canceled prior to its expiration, or expires by limitation, all mining machinery, tools, and appliances placed thereon by said licensee shall be removed within 60 days from date of expiration of notice of such cancellation; otherwise, said machinery, tools, and appliances to become the property of the United States: *Provided*, That no underground support or structure necessary for the preservation of the mine shall be removed.

5. That the right is reserved to the Secretary of the Interior to permit, upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in said lands as may be necessary or appropriate to the working of the same, or of other lands containing coal, or other deposits described in said act, and the treatment and shipment of the products thereof by or under authority of the United States, its lessees, or permittees, and for other public purposes; also the right to dispose of the land, or any deposits therein, under laws authorizing such disposition with reservation of the coal deposits to the United States and the right to prospect for, mine, and remove the same.

6. That said permittee, if a municipality, shall submit to the Secretary of the Interior annually on the anniversary of the date hereof a complete and detailed report of operations under the permit, together with a map or maps, showing the mine workings, giving character and dimensions of underground work performed, buildings and structures erected, and machinery installed during the year, size of the coal vein mined and its dip and strike, character of the coal, amount of coal mined, amount on hand or in stock and where stored, number of miners employed, total amount of wages paid miners and other employees, number of other employees, total salaries paid, cost of supplies and other operating expenses, amount of coal and its products sold and amount received therefor, giving a full statement of the operations under the permit.

Subscribed and sworn to by__________, this__________day of__________, 19__.

(Signature of applicant)

Approved.

--------------------------------,
Secretary of the Interior.

Very respectfully,
CLAY TALLMAN, *Commissioner.*

Approved April 1, 1920.
JOHN BARTON PAYNE,
Secretary of the Interior.

(Act omitted.)

[Reported, 48 L. D. 439]

CIRCULAR NO. 809

BOND OF LESSEES AND SECTION 6 (C) OF LEASE FORM CIRCULAR NO. 679 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 15, 1922.

Registers and Receivers, United States Land Offices.

SIRS: The regulations governing coal-mining leases, permits, and licenses under the act of February 25, 1920, Circular No. 679, approved April 1, 1920 (47 L. D. 489), are hereby amended by adding to section 8 thereof the following provisions:[1]

In case of lease for a small area, where the investment to be made is $10,000 or less, the lessee shall furnish one bond to cover both the investment and compliance with the terms of the lease, such bond to be in half the amount of the investment to be made, but in no case shall it be less than $1,000. The bond executed by the lessee shall be with approved corporate surety or with two qualified individual sureties, together with affidavits of justification by the sureties that each of said sureties is worth double the sum specified in the undertaking over and above their just debts and liabilities in real property exempt from execution, and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster, as to the identity, signatures, and financial competency of the sureties.

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[1] This section was further amended by Circular No. 922, p. 383, and Circular No. 1193, p. 389.

Accordingly, Circular No. 789 of October 31, 1921, amending said section 8 is revoked and superseded hereby.

Paragraph 6 (c) of the lease form is hereby amended to read as follows:

Par. 6 (c). That on the termination of this lease, pursuant to the last preceding paragraph, the lessor, his agent, licensee, or lessee shall have the exclusive right at the lessor's election to purchase at any time within six months thereafter, at the appraised value, any or all buildings, machinery, tools, or other property placed by the lessee in or on the lands leased hereunder, save and except all underground timber and such other supports and structures as are necessary for the protection and preservation of the mine, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, tools, or other property to be purchased as aforesaid shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party hereto and the third to be selected by the two so designated), the valuation so determined by the three or a majority of them to be conclusive and binding upon both parties; that pending such election to purchase within the said period of six months none of the buildings or other property shall be removed from their normal position; that if such valuation be not requested or the lessor shall affirmatively, in writing, elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings, machinery, equipment, tools, and other property within 90 days after being notified in writing by the lessor that the said lessor does not elect to purchase any or all of the buildings, machinery, equipment, tools, or other property, and in case of failure to so remove the said property within 90 days after receipt of such notice, then said buildings, machinery, tools, or other property shall become the property of the United States.

Very respectfully,

William Spry, *Commissioner.*

Approved February 15, 1922.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 320]

Circular No. 922

COAL-LAND REGULATIONS—PARAGRAPHS 8 AND 22 AMENDED [2]

Department of the Interior,
General Land Office,
Washington, March 13, 1924.

Registers and Receivers, United States Land Offices.

Sirs: Paragraph 8 of the regulations (Circular No. 679) of April 1, 1920 (47 L. D. 489), governing coal-mining leases, permits, and licenses under the act of February 25, 1920 (41 Stat. 437), which paragraph was amended February 15, 1922 (Circular No. 809—48 L. D. 439), is hereby amended to read as follows:

8. *Minimum development.*—An actual bona fide expenditure for mine operation, development, or improvement purposes of the amount determined by the Secretary and stated in the lease offer hereinafter referred to is adopted as the

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[2] These paragraphs were further amended by Circular No. 1193, p. 389.

minimum basis for granting leases, with the requirement that not less than one-third of the required investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. If the investment to be made is fixed at more than $10,000, the lessee shall furnish a bond, with approved corporate surety or with two qualified individual sureties, conditioned upon the expenditure of the specified amount of investment. After the required investment has been made, a bond in the sum of $5,000, with approved corporate surety, conditioned upon compliance with the terms of the lease, will be required. In case of lease of a small area, where the investment to be made is $10,000 or less, the lessee shall furnish a bond, with approved corporate surety or with two qualified individual sureties, to cover both the investment and compliance with the terms of the lease, such bond to be in half the amount of the investment to be made but in no case less than $1 000. With bonds signed by individual sureties must be filed affidavits of justification by the sureties that each is worth double the sum specified in the undertaking over and above his just debts and liabilities in real property exempt from execution, and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster, as to the identity, signatures, and financial competency of the sureties. All bonds will be examined from time to time as to their sufficiency, and additional security will be required whenever deemed necessary.

Paragraph 22 of said regulations is hereby amended by adding an additional paragraph, as follows:

(*g*) After a permit is ready for delivery the permittee will be notified and allowed 30 days within which to furnish a bond, with approved corporate surety or two qualified individual sureties (with evidence of qualification as provided in paragraph 8), in the sum fixed by the Secretary when the permit is granted, but not to exceed $500, conditional upon compliance with the terms of the permit and against failure of the permittee to use reasonable precautions to prevent damage to the coal deposits or to leave the premises in a safe condition upon the termination of the permit. Bond with additional obligations therein will be required where the permit embraces lands entered or patented with the coal reserved under the act of June 22, 1910 (36 Stat. 583), or where the lands are a portion of a reclamation project.

Very respectfully,

WILLIAM SPRY, *Commissioner*.

Approved March 13, 1924.

E. C. FINNEY.
First Assistant Secretary.

CIRCULAR NO. 953 [1]

INSTRUCTIONS AS TO COAL MINED UNDER PENDING APPLICATIONS FOR LEASE OR PERMIT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 19, 1924.

Chiefs of Field Divisions, Registers and Receivers.

GENTLEMEN: Since the passage of the act of February 25, 1920, providing for the mining of coal on Government lands under lease and prospecting permit, applicants for such leases or permits have, in many instances, begun mining coal immediately after filing their applications. In such cases it has been the practice up to the present time to collect damages on a trespass basis for all coal so mined up to the date of execution of the lease or permit applied for.

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[1] See Circular No. 1135, p. 386.

In a letter dated May 23, 1924, in response to a request from the Director of the Bureau of Mines for instructions regarding certain phases of the general coal-production situation, the department stated in part as follows:

> All coal mined upon the public domain without any right under the public land laws is mined in trespass and such sums as are received by the Government for coal so mined are covered into the Treasury of the United States as "miscellaneous receipts." (See Circular No. 881 for measures of damage in such cases.)
>
> Reports of production mined in trespass should in all cases be itemized separately from production under permits or leases.
>
> Where a party has applied to have lands offered for lease at public auction and becomes the successful bidder when such auction is held, any operations commenced before such lease is awarded constitutes a trespass and the funds received in payment for coal removed while such trespass existed occupy the same status as though the trespasser was not, at the time of payment, a potential lessee.
>
> If a lessee mines coal before being awarded a lease at public auction, the production is in trespass and is to be separately accounted for as such. In this situation, no rights are initiated by applying to have the lands offered for lease as the applicant must be the highest bidder in order to succeed. Upon award of the lease at the auction the successful bidder in possession is accountable for the coal deposits and rentals as though the lease had issued.
>
> Where, however, a lessee makes application for a lease and shows that he has in good faith improved, occupied, or claimed coal lands and is found equitably entitled to a lease, coal produced prior to the application for a lease was produced in trespass and will be collected for as such, but if the lessee has at all times been in possession of the land, working the same, all coal produced after application is made for a lease will be considered as mined under the lease and the lessee will be held accountable therefor and for the prescribed rental, from that time under the principles stated in the case of the Big-4 Consolidated Oil Company (49 L. D. 482).
>
> Prospecting permits are granted only where such operations are necessary to show the existence and workability of coal deposits. Provision is made in these permits for the payment of a royalty on all coal produced thereunder before lease is applied for. In this case also rentals and royalties under the lease will commence upon the date when lease is applied for.
>
> Where a permittee has discovered coal and has applied for a lease, such application supersedes the permit and when lease is granted it relates back to the time of application. There can be no interval, for the permittee must account for the coal in accordance with the terms of his permit until lease is applied for and thereafter in accordance with the terms of the lease.

In accordance with the above, you will hereafter observe the following rules:

1. Coal mined from the date of filing of an application for prospecting permit to the date of execution of the permit is in trespass and must be settled for on a trespass basis, but at the rate of 25 cents a ton fixed in the permit.

2. Where a permittee has discovered coal and has applied for a lease his rights relate back to the date of filing of the application for lease and the mining of coal thereunder does not constitute a trespass.

3. Where the applicant has no equities, gained prior to the passage of the leasing act, but is awarded a lease as the successful bidder at the auction, coal mined by him from the date of filing of his application to the date of awarding of the lease at the auction must be settled for as a trespass, but at the rate of royalty fixed in the lease.

4. Where an applicant has been awarded a lease on account of equities gained prior to the passage of the leasing act his rights relate back to the date of filing of the application. Coal mined prior to the

filing of the application for lease is, however, a trespass and must be settled for on a trespass basis.

Settlements for coal mined in trespass should be made to the chief of field division and transmitted by him with his report in the matter to this office as in other trespass cases. If, for any reason, such settlements are made to the registers and receivers, they will promptly forward the same to the proper chief of field division for appropriate action.

Cases now pending in this office will be adjudicated in accordance with the above instructions.

Very respectfully, WILLIAM SPRY, *Commissioner.*

Approved. E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 1118

NOTICE TO DIVISION INSPECTOR OF APPLICATION FOR COAL-PROSPECTING PERMIT OR LEASE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 9, 1927.

Registers, District Land Offices.

GENTLEMEN: Herewith inclosed are a few copies of form No. 4–205 notice to the division inspector of an application for coal-prospecting permit or lease.

Upon the filing of an application in your office for a coal-prospecting permit or lease you will send a notice thereof to the division inspector, using one of the inclosed forms. Another of these forms may be had upon the receipt of the proper requisition.

When you have sent the said notice to the division inspector you will note that fact on the margin of the application and handle said application in the usual manner.

If an applicant should send money to your office in payment for coal mined in trespass you should immediately send it to the proper division inspector for transmittal to this office.

Very respectfully,
THOS. C. HAVELL, *Acting Commissioner.*

(Form omitted.)

[Reported, 52 L. D. 216]

CIRCULAR NO. 1135—SUPPLEMENTAL TO CIRCULAR 953

INSTRUCTIONS AS TO COAL MINED UNDER PENDING APPLICATIONS FOR LEASE OR PERMIT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 1, 1927.

Division Inspectors and Registers, United States Land Office.

GENTLEMEN: Section 3 of Circular No. 953, Instructions as to Coal Mined Under Pending Applications for Lease or Permit, approved July 19, 1924, provides as follows:

3. Where the applicant has no equities gained prior to the passage of the leasing act, but is awarded a lease as the successful bidder at the auction, coal mined by him from the date of filing of his application to the date of awarding of the lease at the auction must be settled for as a trespass, but at the rate of royalty fixed in the lease.

The division inspector is expected to procure settlement for any coal mined in trespass prior to the award of the lease. Payments for coal mined subsequent to the award should be collected by the register and applied as royalty.

The register will, upon award of the lease at the auction, at once notify the proper division inspector and also the district mining supervisor of the Geological Survey of such award, in order that the division inspector may take prompt action looking toward collecting settlement for and closing out any trespass which may have been committed prior to the award and the district mining supervisor may take steps with a view to ascertaining the condition of the mine, if mining operations are being conducted, and submitting production reports of any coal mined subsequent to the award.

If upon receipt of a lease for delivery the register has information that coal has been mined subsequent to the date of award and payment has not been made therefor he will take immediate steps to collect the amount due.

The register is further directed to see that all notices to permittees or lessees of the cancellation of a permit or lease contain the following statement:

> Mining of coal from the land involved subsequent to receipt of this notice of cancellation is unauthorized and in violation of law. Such mining operations will render you liable to the penalties provided for willful trespass upon Government lands.

The division inspector will upon receipt of notice of cancellation of a lease or permit take such steps as may be necessary to ascertain whether mining operations thereunder ceased upon receipt by permittee or lessee of the notice of cancellation. If not, he will collect payment for all coal so mined on the basis of willful trespass and take such further action as may be necessary to prevent continuation of the mining operations.

Very respectfully, WILLIAM SPRY, *Commissioner.*

Approved October 1, 1927.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 1149 [1]

[Reported, 52 L. D. 366]

EXTENSIONS OF TIME UNDER COAL PERMITS—INSTRUCTIONS UNDER THE ACT OF MARCH 9, 1928 (45 STAT. 251)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 3, 1928.

Registers, United States Land Offices.

GENTLEMEN: By act of Congress approved March 9, 1928 (45 Stat. 251), the Secretary of the Interior was authorized to grant an extension of time for a period of two years on any coal prospecting permit issued under the act of February 25, 1920 (41 Stat. 437). The act, which does not apply to Alaska, is as follows:

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[1] See Circular No. 926, p. 970.

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any coal prospecting permit issued under the act entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain," approved February 25, 1920, as amended, may be extended by the Secretary of the Interior for a period of two years, if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to determine the existence or workability of coal deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons in the opinion of the Secretary warranting such extension.
>
> SEC. 2. Upon application to the Secretary of the Interior, and subject to valid intervening rights and to the provisions of section 1 of this act, any coal permit that has already expired because of lack of authority under existing law to make extensions, may, in the discretion of the Secretary, be extended for a period of two years from the date of the passage of this act.

Accordingly, a permittee who has been unable with the exercise of reasonable diligence to determine the existence or workability of the coal deposits, or who gives other reasons, which, in the opinion of the Secretary, warrant an extension, and who desires to prosecute further prospecting, may, if the facts warrant, be granted an extension of time upon filing an application therefor, accompanied with his own affidavit setting forth what efforts, if any, he has made to comply with the terms of his permit and the reasons for failure fully to comply therewith, such showing to be corroborated by the affidavit of at least one disinterested person having actual knowledge of the facts.

Under the second section of the act, even where a permit expired prior to the passage of the act, it may be extended for a period not exceeding two years from the date of the act subject to valid intervening rights and to the provisions of section 1 of the act. In no case would an extension under section 2 go beyond March 9, 1930.

As the permit bond is limited to the period for which the permit was granted, the permittee must furnish with an application for extension a properly executed assent by the surety to the extension of his bond to cover the life of the permit as it will be extended if an extension is granted, or furnish a new bond.

The application for extension may be filed in the General Land Office or in the local land office having jurisdiction over the land involved by the permit, to be promptly forwarded by the register to this office. The application should show how much additional time is considered necessary to complete prospecting work. Extensions will be limited to such period, not exceeding the two years authorized, as may be determined to be allowable under the circumstances in each particular case.

You will give to the regulations the widest publicity possible without expense to the Government.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved May 3, 1928.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR No. 1193

COAL-LAND REGULATIONS—PARAGRAPHS 8 AND 22 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 11, 1929.

Registers, United States Land Offices.

GENTLEMEN: Paragraph 8 of the regulations (Circular No. 679) of April 1, 1920 (47 L. D. 489), governing coal-mining leases, permits, and licenses under the act of February 25, 1920 (41 Stat. 437), which paragraph was amended February 15, 1922 (Circular No. 809, 48 L. D. 439), and March 13, 1924 (Circular No. 922, 50 L. D. 320), is hereby amended to read as follows:

8. *Minimum development.*—An actual bona fide expenditure for mine operation, development, or improvement purposes of the amount determined by the Secretary and stated in the lease offer hereinafter referred to is adopted as the minimum basis for granting leases, with the requirement that not less than one-third of the required investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years.

If the investment to be made is fixed at more than $10,000, the lessee shall furnish a bond, with approved corporate surety, conditioned upon compliance with the investment requirement and with the other terms of the lease. After the required investment has been made, a bond in the sum of $5,000, with approved corporate surety, conditioned upon compliance with the terms of the lease, may be substituted for the $10,000 bond.

In case of lease of a small area, where the investment to be made is $10,000 or less, the lessee shall furnish a bond, with approved corporate surety or with two qualified individual sureties, to cover both the investment and compliance with the other terms of the lease, such bond to be in half the amount of the investment to be made, but in no case less than $1,000.

With bonds signed by individual sureties must be filed affidavits of justification by the sureties that each is worth, in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities.

With such bonds must also be furnished a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster, as to the identity, signatures, and financial competency of the sureties. All bonds will be examined from time to time as to their sufficiency, and additional security will be required whenever deemed necessary.

Paragraph 22 of said regulations, which paragraph was amended March 13, 1924 (Circular 922, 50 L. D. 320), is hereby amended to read as follows:

(*g*) The applicant must furnish a bond with qualified corporate surety or with two qualified individual sureties (with evidence of qualification, as provided in paragraph 8), the bond to be in the sum of $500 and conditioned upon compliance with the terms of the permit and against failure of the permittee to use reasonable precaution to prevent damage to the coal deposits or to leave the premises in a safe condition upon the termination of the permit. Bond in the sum of $1,500 will be required where the permit embraces land entered or patented with the coal reserved under the act of June 22, 1910 (36 Stat. 583), or where any part of the land is within a reclamation project. The bond may be filed with the application, which will expedite action thereon, or within 30 days after receipt of notice by the applicant that the permit will be granted when the bond is filed.

Very respectfully, C. C. MOORE, *Commissioner.*

Approved June 11, 1929.
JOHN H. EDWARDS,
Assistant Secretary.

COLOR OF TITLE AND SMALL HOLDING CLAIMS

[Reported, 21 L. D. 157]

SMALL HOLDING CLAIMS

Department of the Interior,
General Land Office,
Washington, D. C., September 18, 1895.

Registers and Receivers, United States District Land Offices in the Territories of New Mexico, Arizona, and Utah, and the States of Colorado, Nevada, and Wyoming.

Gentlemen: Your attention is called to the provisions of sections 16 and 17 of the act of Congress approved March 3, 1891, entitled "An act to establish a court of private land claims and to provide for settlement of private land claims in certain States and Territories" (26 Stat. 854), as amended by the act approved February 21, 1893 (27 Stat. 470).

As the object of said act is the final adjudication of all private land claims in the States and Territories aforesaid, so the object of said sections 16 and 17 is the final adjudication of that class of private claims, or "small holdings" therein described, and to furnish the means whereby title thereto can be perfected by the claimants thereof.

Section 16 relates to "small holdings" situate in those parts of said States and Territories over which the township surveys had not been extended at the date of the passage of said act; and section 17 relates to the same class of claims situate in townships which had been surveyed at that time.

By section 16, the right to receive patent for the land occupied is recognized in any person who has, through himself, his ancestors, grantors, or their lawful successors in title or possession, been in the continuous, adverse, actual, bona fide possession of any tract of land, which does not, in itself, or in connection with other tracts so held by him, exceed 160 acres, for 20 years next preceding the time when the survey of the township in which such tract is situate shall be made, and provision is made for the survey of such land and the issuance of patent therefor: *Provided*, That no person shall be entitled to confirmation of, or to patent for, more than 160 acres in his own right by virtue of this section.

By section 17, all persons who have been in the actual, continuous, adverse possession, through themselves, their ancestors, grantors, or those under whom they claim, of tracts of land not exceeding 160 acres each, for 20 years next preceding the time when the survey of the township in which the land is situate was made, are permitted, upon making proof of such possession, and of the further fact that they, or their ancestors or grantors, or those under whom they claim, became citizens of the United States by reason of the treaty of Guadalupe Hidalgo or the terms of the Gadsen purchase, to enter, without payment of purchase money, fees or commissions, such subdivisions, not exceeding 160 acres, as shall include their said possessions: *Provided*, That no person shall be entitled to enter more than 160 acres in one or more tracts in his own right under the provisions of this section.

In order that these claims may be adjudicated, you will secure from the surveyor general, as soon as a township containing such claims shall have been surveyed, a list of the claims therein, with the names of the claimants, and if possible their post-office addresses. In case of townships already surveyed, you should be furnished a list of those claims that have been filed with the surveyor general that conform to legal subdivisions, and where it is necessary to survey the claims the list should be furnished you as soon as the surveys of said claims are approved.

When this information has been received you will notify each of the claimants that he will be allowed 90 days to submit proof of his possession and occupation in accordance with the following instructions:

1. Each of the claimants under the provisions of section 16 who was in the actual, adverse, bona fide possession of his claim 20 years prior to the survey of the township in which the land is situated, and has so occupied and held the same continuously from that time on to the making of such survey, will be required to make affidavit to that fact, stating therein the character and origin of his claim, and the material facts relied upon to show such possession.

2. Each of the claimants under the provision of said section 16 who was not in the actual, adverse, bona fide possession of his claim 20 years prior to the survey of the township in which the land was situated, but who bases his claim upon the actual, adverse, bona fide possession of those under whom he holds, will be required to make affidavit to that fact, stating therein the name of the person so occupying the land claimed 20 years prior to such survey, and the name of each of his successors in such occupancy during the said period of 20 years; the respective periods, as near as may be, that the land was so held by each of such successive occupants; the material facts relied upon to show such possession during said period; and giving a complete history of his title to such claim, from the first of the occupants mentioned down to the present claimant.

3. Each of the claimants under the provisions of section 17 will be required to make affidavit in accordance with the foregoing instructions 1 or 2, as the case may be, stating therein the additional facts necessary to show that he became a citizen of the United States by reason of said treaty of Guadalupe Hidalgo or the terms of the Gadsen purchase, or that some former occupant or claimant of said land from whom he derived his title or possession so became a citizen of the United States; and in the latter case giving a complete history of the title to his claim from the ancestor or grantor so naturalized down to the present claimant.

4. If documentary evidence of the title of such claimants is in existence such evidence or duly authenticated copies of the documents must be produced and filed by them.

5. Every material fact set forth in the claimant's affidavit, or necessary to the validity of his claim, not established by competent documentary evidence, must be substantiated by the affidavits of not less than two disinterested witnesses having a personal knowledge of the facts.

As the proof submitted must depend upon the character of the claim, no blank forms can be prepared applicable to all cases.

When such proof has been filed in your office you will examine the same in each case, and if found sufficient, in your opinion, to establish the title of the claimant to the tract applied for, you will approve the same and issue a joint certificate of the form hereto attached, a supply of which will be sent to you as soon as practicable.

These entries should be accounted for in a separate series, commencing with No. 1, and may be accounted for on any of your abstracts with the necessary change of heading to indicate the class of claims, and referring to the acts cited.

It will be noticed that section 17 of said act, allows entry under said section without payment of purchase money, fees or commissions, and as section 16 does not provide for any payment, entries will be allowed thereunder without fees or commissions.

The proof required by these regulations must be made before one of you, or before one of the officers designated by the act of May 26, 1890 (26 Stat. 121).

Section 18, act of February 21, 1893, supra, limits the time of filing such claims with the surveyor general to two years after the 1st day of December, 1892, and under this provision claims not filed on or before December 1, 1894, should be rejected by you.

Very respectfully,

E. F. Best,
Acting Commissioner.

Approved.

Jno. M. Reynolds,
Acting Secretary.

(Form omitted.)

[Reported 22 L. D. 523]

PRIVATE LAND CLAIMS—SMALL HOLDINGS

Department of the Interior,
General Land Office,
Washington, D. C., March 25, 1896.

Registers and Receivers, United States Land Offices in the Territories of New Mexico, Arizona, and Utah, and the States of Colorado, Nevada, and Wyoming.

Gentlemen: Referring to the circular of instructions of September 18, 1895 (21 L. D. 157), in relation to claims arising under the sixteenth and seventeenth sections of the act of March 3, 1891 (26 Stat. 854), as amended by the act of February 21, 1893 (27 Stat. 470), you are directed to require the claimant in each of such cases to publish notice of his intention to submit proof of his occupation and possession of the land included in his claim, in accordance with the requirements of said act, under the same terms and restrictions as govern publication of notice in homestead cases.

These instructions only apply to cases wherein proof is hereafter submitted, and will not have a retroactive effect.

The form of notice should follow, as nearly as practicable, that in homestead cases, with the necessary alterations to indicate the character of the claim and of the proof to be submitted.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

Approved.

JNO. M. REYNOLDS,
Acting Secretary.

[Reported, 37 L. D. 536]

EXTENSION OF TIME FOR FILING SMALL HOLDING CLAIMS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 30, 1909.

Registers and Receivers of United States District Land Offices and United States Surveyors General, in the Territories of New Mexico and Arizona, and in the States of Utah, Colorado, Nevada, and Wyoming.

GENTLEMEN: Your attention is called to the act of February 26, 1909,[1] (35 Stat. 655), which provides:

> That section eighteen of an act entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March third, eighteen hundred and ninety-one, as amended by the act approved February twenty-first, eighteen hundred and ninety-three, and by the act approved June twenty-seventh, eighteen hundred and ninety-eight, be, and the same is hereby, further amended by striking out the words "before the fourth day of March, nineteen hundred and one," and inserting in lieu thereof the words "before the fourth day of March, nineteen hundred and ten," so that the first clause of said section shall read as follows, namely:
>
> "That all claims arising under either of the two next preceding sections of this act shall be filed with the surveyor-general of the proper State or Territory before the fourth day of March, nineteen hundred and ten, and no claim not so filed shall be valid,"
>
> *Provided,* That the extension herein granted shall not apply to lands within the limits of a confirmed grant or embraced in any entry completed under the public land laws prior to filing of a claim hereunder, nor shall its provision extend to persons holding under assignments made after March third, nineteen hundred and one.

This is an extension of time until March 4, 1910, for the filing of small holding claims arising under secs. 16, 17, and 18 of the act of March 3, 1891 (26 Stat. 854), as amended by the act of February 21, 1893 (27 Stat. 470), the last previous extension of which was by the act of June 27, 1898 (30 Stat. 495), extending the time for filing such claims with the proper surveyor general to March 4, 1901.

In receiving filings and proofs hereunder you will be governed by the provisions of the acts cited and the circulars of September 18, 1895 (21 L. D. 157), and March 25, 1896 (22 L. D. 523). The circular of May 1, 1896 (22 L. D. 524), is hereby revoked and the circular of August 2, 1904 (33 L. D. 156), is also hereby revoked in so far as publication is not required. In all cases of small holding claims you will hereafter require publication of notice as provided by circular of March 25, 1896 (22 L. D. 523).

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[1] See also act of July 3, 1916, (39 Stat. 342).

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

R. A. BALLINGER, *Secretary.*

[Reported, 39 L. D. 135]

SMALL HOLDING SETTLERS—RAILROAD GRANT—COAL LANDS

DEPARTMENT OF THE INTERIOR,
Washington July 29, 1910.

First Assistant Secretary Pierce to the Commissioner of the General Land Office:

The department has received your office letter of July 25, 1910, submitting for consideration certain questions arising under the act of April 28, 1904 (33 Stat. 556), for the relief of small holding settlers within the limits of the grant to the Atlantic and Pacific Railroad Co. in the Territory of New Mexico, which act reads as follows:

> That the Atlantic and Pacific Railroad Company, its successors in interest and its or their assigns, may, when requested by the Secretary of the Interior so to do, relinquish or deed, as may be proper, to the United States any section or sections of its or their lands in the Territory of New Mexico, the title to which was derived by said railroad company through the act of Congress of July twenty-seventh, eighteen hundred and sixty-six, in aid of the construction of said railroad, any portion of which section is and has been occupied by any settler or settlers as a home or homestead by themselves or their predecessors in interest for a period of not less than twenty-five years next before the passage of this act, and shall then be entitled to select in lieu thereof, and to have patented other sections of vacant public land of equal quality in said Territory, as may be agreed upon with the Secretary of the Interior.
>
> SEC. 2. That the Secretary of the Interior shall, as soon as may be after the passage of this act, cause inquiry to be made of all lands so held by settlers, and shall cause the holdings of such settlers to be surveyed, without cost to the settlers, cause patents to issue to each such settler for his or her such holdings: *Provided*, That not to exceed one hundred and sixty acres shall be patented to any one person, and such recipient must possess the qualifications necessary to entitle him or her to enter such land under the homestead laws.
>
> SEC. 3. That any fractions of any such sections of land remaining after the issuance of patents to the settlers as aforesaid shall be subject to entry by citizens the same as other public lands of the United States.

The small holding settlers referred to in the title of the act are those for whom provision was made by sections 16 and 17 of the act of March 3, 1891 (26 Stat. 854), as amended by the act of February 21, 1893 (27 Stat. 470), and inasmuch as it was found that certain of these small holding claims were located upon lands which passed to the Atlantic & Pacific Railroad Co., now the Santa Fe Pacific Railroad Co., under the grant of July 27, 1866 (14 Stat. 292), the act of April 28, 1904, supra, was passed for the purpose of affording a means whereby relief might be granted these settlers. The grant to the railroad company did not except lands valuable for coal and it having been found that some of the lands which have been patented to the company are claimed by the settlers under the act of 1904, and are valuable for coal, the company wishes to be assured before relinquishing the lands claimed by the settlers that it will be allowed to select coal land of equal quality in lieu thereof.

It is stated in your office letter that the proposed deed submitted by the company has been examined and found to be satisfactory except that it includes a tract in sec. 17, T. 13 N., R. 17 W., upon which no small holding claim is located, and because of which said tract may not be relinquished by the company and must, in any event, be eliminated from the deed; and while your office expresses the opinion that the lands are clearly within the terms of the law the question is suggested that there may be grave objection to any conclusion which would authorize the disposal of lands valuable for their coal deposits in the manner indicated.

It will be seen by referring to the act of 1904, quoted above, that no mention is made of mineral lands nor are the settlers confined in terms to nonmineral lands. The act clearly authorizes the Atlantic & Pacific Railroad Co., or its successors in interest, to relinquish any land acquired under its grant, upon which the Secretary of the Interior is authorized to issue a patent to such settler for the land held by him, there being but one proviso, namely, that not to exceed 160 acres shall be patented to any one person, who must possess the qualifications necessary to entitle him to enter such land under the homestead laws.

By the terms of the treaty of Guadalupe Hidalgo, concluded February 2, 1848 (9 Stat. 922), the United States agreed to protect the titles of individuals derived from former sovereigns owning the territory, and provision was made for confirmation of such claims by the act of July 22, 1854 (10 Stat. 308). A number of claims filed with the surveyor general as provided for by the act of 1854, some embracing very large areas and others consisting only of small claims, were confirmed by Congress from time to time until March 3, 1891, when Congress, by act of that date, created a court of private land claims for the adjudication of all such claims in the territory acquired from Mexico.

By the sixteenth and seventeenth sections of the act of 1891, Congress afforded the holders of small tracts, not exceeding 160 acres, and who had occupied the same for the period specified in the act, an inexpensive and easy method of acquiring title thereto without the necessity of resorting to the court of private land claims for confirmation. These claimants had merely to file their claims with the surveyor general of the Territory and to make proof of their citizenship, by virtue of the treaty with Mexico, and their occupation of the land for the period named in the act. The act contained no provision whatever restricting such claims to nonmineral lands, whereas in that portion of the act relating to claims submitted for confirmation by the court, it was provided that no allowance or confirmation of any claim should confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, unless the grant claimed effected the donation or sale of such mines or minerals, or unless the grantee had otherwise become entitled thereto in law and in equity.

While it is true that no express exception of mineral lands is necessary to exclude them from an ordinary grant, nevertheless, where

Congress undertakes to except certain minerals, the presumption is that all other minerals not named are not excepted, and it is but reasonable to assume that Congress intended to impose no greater restrictions upon the small holding claimant provided for by sections 16 and 17 of the act than were imposed upon the owners of larger claims who were required to procure confirmation through the court.

Having under consideration the purpose of sections 16 and 17 of the act of 1891, this department has said:

> The history of the act of 1891 and the terms of the act itself, which was the successful culmination of frequent attempts since the act of 1854 at legislation looking to the final settlement of private land claims in the territory derived from the Republic of Mexico, show that the homes and lands of small holding claimants * * * were the objects of the special solicitude of Congress, and that it was the intention by the passage of the latter act to afford them full protection, and provide a simple and easy means by which they could secure and perfect their titles against all possibility of successful claim under the public land laws of the United States as well as against danger to them by reason of failure of confirmation of the alleged Spanish or Mexican grants within which their claims were situated. It is believed that the laws and decisions applicable to the facts in this case should be liberally construed and applied in behalf of these small holding claimants. (Apodaca et al. *v.* Mulligan, 27 L. D. 604, 608.)

As stated in your office letter, Congress knew that the railroad company acquired the title to coal land under its grant, and as the act of 1904 clearly provided that the company may relinquish any section of land acquired under the grant which is occupied by a small holding settler, to the end that the home of the latter may be protected, there would seem to be no reason why the land so relinquished by the company may not be patented to the settler if he can show himself qualified under the terms of the act. Such being the case, and as the acts expressly provide that the company relinquishing the land may select in lieu thereof "vacant public land of equal quality in said territory," the company, upon relinquishing lands found to be valuable for coal, would appear to be entitled to select in lieu thereof coal lands equal in value to those relinquished.

[Reported, 49 L. D. 275]

CIRCULAR NO. 849

SMALL HOLDING CLAIMS IN NEW MEXICO

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 13, 1922.

Registers and Receivers, United States Land Offices, and the Surveyor General, in the State of New Mexico.

GENTLEMEN: Your attention is called to the act approved by Congress June 15, 1922 (42 Stat. 650), which provides:

> That in township surveys hereafter to be made in the State of New Mexico, if it shall be made to appear to the satisfaction of the deputy surveyor making such survey that any person has, through himself, his ancestors, grantors, or

their lawful successors in title or possession, been in the continuous adverse actual bona fide possession, residing thereon as his home, of any tract of land or in connection therewith of other lands, altogether not exceeding one hundred and sixty acres, in such township for twenty years next preceding the time of making such survey, the deputy surveyor shall recognize and establish the lines of such possession and make the subdivision of the adjoining lands in accordance therewith. Such possession shall be accurately defined in the field notes of the survey and delineated on the township plat, with the boundaries and area of the tract as a separate legal subdivision. The deputy surveyor shall return with his survey the name or names of all persons so found to be in possession, with a proper description of the tract in the possession of each as shown by the survey, and the proofs furnished to him of such possession.

Upon receipt of such survey and proofs the Commissioner of the General Land Office shall cause careful investigation to be made in such manner as he shall deem necessary for the ascertainment of the truth in respect of such claim and occupancy, and if satisfied upon such investigation that the claimant comes within the provisions of this section, he shall cause patents to be issued to the parties so found to be in possession for the tracts respectively claimed by them: *Provided, however,* That no person shall be entitled to confirmation of, or to patent for, more than one hundred and sixty acres in his own right by virtue of this section.

All claims arising under this act shall be filed with the surveyor general of New Mexico within two years next after the passage of this act, and no claim not so filed shall be valid. No tract of such land shall be subject to entry under the land laws of the United States: *And provided further,* That this act shall not apply to any city lot, town lot, village lot, farm lot, or pasture lot held under a grant from any corporation or town the claim to which may fall within the provision of this act.

It will be observed that the act is practically a reenactment of sections 16 and 18 of the act of March 3, 1891 (26 Stat. 861), as originally passed, restricted in its application to the State of New Mexico. The words "residing thereon as his home," which were stricken out of section 16 of the act of March 3, 1891, by the act of February 21, 1893 (27 Stat. 470), are retained in the said act.

This act applies only to townships surveyed after its passage.

All claims arising under the said act must be filed with the surveyor general of New Mexico within two years after June 15, 1922, and any claim not so filed must be rejected.

The act is restricted in its application to natural persons, and the possession required by the act must be maintained during the required period by individuals, and a claim by an individual based, in whole or in part, upon possession maintained by his grantor or predecessor in interest who was a corporation or a town is invalid.

To the end that the claims which will arise under the said act may be efficiently and expeditiously adjudicated, you are directed to be guided by the following instructions:

1. The surveyor general shall assign a number to all claims filed under the provisions of the said act and require such proof to be made in support thereof as he shall deem satisfactory, following the method heretofore adopted in claims which have arisen under sections 16, 17, and 18 of the act of March 3, 1891 (26 Stat. 861).

2. After an application for such claims shall have been filed and proof shall have been made before the surveyor general in support thereof, the surveyor general shall immediately forward to the register and receiver of the land district in which the claim is situate a copy of the application so filed and proof made.

3. The deputy surveyor, when surveying a township containing such claims, applications for which shall have been filed, shall, before

such claims are segregated, satisfy himself that such claims shall have been resided upon as homes.

4. As soon as a township containing such claims shall have been surveyed and a copy of said plat of survey shall have been approved and filed in the district land office, the register and receiver of such office shall ascertain whether or not the surveyor general has forwarded a copy of the applications and proofs as required by paragraph 2 of these instructions, and in the event it is found that they have not been forwarded, the register and receiver shall immediately request the surveyor general to forward the same.

5. When this information shall have been received the register and receiver shall serve notice upon each of such claimants that 90 days from receipt of notice will be allowed within which to begin the publication of notice of intention to submit final proof, as hereafter required, and in the event the said publication is not begun within the time allowed and final proof finally submitted in due course the said claim will be canceled and finally closed.

6. The register and receiver shall require each of such claimants to publish notice of intention to submit final proof of his occupation and possession under the same terms and restrictions as govern publication in homestead cases following the same form with the necessary alterations as will indicate the nature of the claim and of the proof to be submitted. In all cases in which the claims are situated in sections that have been granted to the State for school purposes the claimants shall be required to serve notice of intention to submit final proof upon the proper State authorities, either personally or by registered mail, and to furnish evidence of such notice at the time of making final proof.

7. In making final proof the claimant will be required to make affidavit setting forth the name of the original settler and the date of the original settlement; the names of all mesne possessors of such claim, if any, and the periods held by each, giving the exact dates, and how each such possessor acquired possession of such claim; the date the then present claimant took possession of such claim, how he acquired possession thereof and the manner in which each such possessors has maintained possession of such claim. If documentary evidence of title of such claimants is in existence such documents or duly authenticated copies thereof must be produced and filed with the proof. Every material fact stated in the claimant's affidavit or necessary to the validity of his claim not established by competent documentary evidence must be substantiated by the affidavits of not less than two disinterested persons having a personal knowledge of the facts.

8. When such proof has been made the register and receiver will examine the same in each case and, if satisfied that the provisions of the said act have been complied with, issue final certificate thereon in duplicate, of the usual form, with such modifications as shall be necessary to show the act under which the claim arose, and transmit the duplicate to the claimant and the original, together with all the records in the case, to this office for final action. If, after considering the said proof, the register and receiver should be of the opinion that it does not meet the requirements of the said act, the register and receiver will reject the same allowing an appeal to this office.

9. If, after serving the notice required by paragraph 5 of these instructions and the expiration of the time allowed, no action having been taken by such claimants, the register and receiver will transmit all the records in such cases, together with evidence of such notice having been given, to this office for further action.

10. The proof required by these instructions must be made before the register or the receiver or one of the officers authorized to take proof in homestead cases.

Very respectfully,

William Spry, *Commissioner.*

Approved September 13, 1922.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 488]

Circular No. 1079 [2]

PURCHASE OF LANDS IN NEW MEXICO, ACT OF JUNE 8, 1926

Department of the Interior,
General Land Office,
Washington, July 13, 1926.

Registers, United States Land Offices, Santa Fe and Las Cruces, New Mexico.

Sirs: Your attention is called to the act of Congress approved June 8, 1926 (44 Stat. 709), Sixty-ninth Congress, entitled "An Act to authorize the Secretary of the Interior to issue patents for lands held under color of title," which provides:

> That whenever it shall be shown to the satisfaction of the Secretary of the Interior that a tract or tracts of public land, not known to be mineral, in the State of New Mexico, not exceeding in the aggregate one hundred and sixty acres, has or have been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than twenty years under claim or color of title, and that valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation, the Secretary may, in his discretion, upon the payment of $1.25 per acre, cause a patent or patents to issue for such land to any such citizen: *Provided*, That where the area or areas so held by any such citizen is in excess of one hundred and sixty acres the Secretary may determine what particular subdivisions, not exceeding one hundred and sixty acres in the aggregate, to any such citizen may be patented hereunder: *Provided further*, That the term "citizen" as used herein shall be held to include a corporation organized under the laws of the United States or any State or Territory thereof.

This act authorizes the Secretary of the Interior in his discretion to issue patents for not more than 160 acres of land in New Mexico to citizens of the United States who have or whose ancestors or grantors have held the land peaceably and adversely for more than 20 years under claim or color of title upon payment for the land at the rate of $1.25 per acre.

Only claims for surveyed land will be recognized under the provisions of this act. If a tract is shown on the plat of survey as included in a private land or small holding claim, the designation thereof must be shown as public land on an official plat of survey before an entry under this act can be allowed. If unsurveyed land is claimed, the filing of such claim should be deferred until the land has been surveyed.

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[2] Modified by Circular No. 1097, p. 402. See par. 18, Circular No. 1186, p. 407.

Persons applying for patent under the provisions of this act must file a nonmineral affidavit. They must show by affidavit that their possession, or the possession of their ancestors or grantors for the 20 years next preceding the filing of the claim has been peaceful and adverse by setting forth the facts of the possession and not merely the conclusions. If improvements have been placed upon the land, the nature and value thereof should be set forth, together with the time of their construction, and cost, and by whom constructed. If any of the land has been reduced to cultivation, the amount of land claimed so reduced, when it was so reduced, and the nature of the cultivation should be set forth.

In making proof, the claimant will be required to make affidavits setting forth the names of all the mesne possessors of the land, periods held by each, giving the exact dates and how each possessor acquired possession of the land; the date the claimant took possession of the land, how he acquired possession thereof and the manner in which each of the possessors has maintained possession of the land. If documentary evidence of title of the claimant is in existence, such documents or duly authenticated copies thereof must be produced and filed with the proof.

If the claimant is a natural person, the affidavit should set forth whether the claimant is a male or a female and whether the claimant is a native born or a naturalized citizen of the United States. If claimant is a female, the affidavit should set forth whether she is married or single and if married the date of her marriage and the facts concerning her husband's citizenship. If the claimant is a naturalized citizen of the United States a certified copy of the certificate of naturalization should be filed. In case the land is claimed by a corporation a certified copy of the articles of incorporation should be filed.

The said act does not contemplate the recognition of any claim for more than 160 acres (or approximately that area under the rule of approximation), and no person claiming more than approximately 160 acres will be permitted by transfer of portions of the land claimed to secure recognition of his claim, through himself and his grantees, for more land in the aggregate than he could purchase in his own name. It must be shown in each case that the land claimed is not part of a claim which embraced more than approximately 160 acres on June 8, 1926, or if the land claimed is part of such a larger claim the full facts relative thereto must be shown.

The claimant must in each case show whether or not he has filed any other claim under the said act, and if he has filed another claim he must identify it.

Every material fact stated in the claimant's affidavit or proof or necessary to the validity of his claim not established by competent documentary evidence must be substantiated by the affidavits of not less than two disinterested persons having knowledge of the facts.

The register will require any claimant, under the provisions of this act, to publish notice of intention to submit proof on his appication to purchase under the same terms and restrictions as govern publications in homestead cases, following the same form with such necessary alterations as will indicate the claim and of the proof submitted. In all cases in which the claims are situated in sections that have been granted to the State for school purposes, the claimant will be required to serve notice of intention to submit final proof upon the proper State authorities either personally or by registered mail, and to furnish evidence of such service at the time of making proof.

When such proof has been made, the register will examine the same in each case and if satisfied that the provisions of the act have been complied with will issue final certificate thereon in duplicate on the usual form with such modifications as will be necessary to show the act under which the claim arose and transmit the duplicate to the claimant and the original, together with all the records in the case, to this office for final action. If, after considering the said proof, the register should be of the opinion that it does not meet the requirements of the act, he will reject it, allowing an appeal to this office.

The proof required by these instructions must be made before the register or one of the officers authorized to take proof in homestead cases.

Very respectfully,

William Spry,
Commissioner.

Approved July 13, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 598]

Circular No. 1097

REGULATIONS RELATIVE TO PURCHASE OF LANDS IN NEW MEXICO—CIRCULAR NO. 1079 MODIFIED

Department of the Interior,
General Land Office,
Washington, September 29, 1926.

Register, Santa Fe, New Mexico.

Sir: I have your letter of August 23, 1926, suggesting modifications of office Circular No. 1079, dated July 13, 1926, relative to the purchase of lands in New Mexico under the act of June 8, 1926 (44 Stat. 709).

1. Small holding claims have from the beginning been classified with private land claims. See the instructions of September 18, 1895 (21 L. D. 157). Small holding claims have had a distinctive designation on the plats of survey, being given a number of tract and a small holding claim number. Public lands irregular in area

have usually been given a lot number or have been designated by a letter of the alphabet. The act of June 8, 1926, authorizes the disposal thereunder of "tract or tracts of public land." There is therefore seen no reason for a modification of said Circular No. 1079, which requires that before allowance of an entry under the act of June 8, 1926, the land be designated in accordance with the public land system.

2. Where a small holding claimant submits proof on a claim and same is rejected because of inability of the claimant to qualify under an applicable small holding claim act, he may at once waive his right of appeal and file an application to be allowed to purchase the land under said act of June 8, 1926. Such application should be accompanied by the proof or by copy of the proof submitted under the small holding act. If such proof is clear and unmistakable as to all the tracts applied for and satisfactorily shows that the applicant is entitled to purchase the land under the act mentioned; if proper publication of notice has been had of the small holding claim and no protest has been filed or other objection shown by your records, this office will, as speedily as practicable after receiving your report, accompanied by the evidence submitted, prepare a supplemental plat, retaining the boundaries of the small holding claim but clearing away the reference thereto as such and substituting a lot number or other legal designation with appropriate area as in rectangular surveys, and will instruct you to issue final certificate, if proper payments have been made, without further proof or publication of notice.

3. In the case of small holding claims as shown by the official plats, the parties entitled to submit proof thereon may waive their rights to acquire title under the small holding acts and file an application to purchase under the act of June 8, 1926. You will submit such application to this office with your report as to what your records show with regard thereto, whereupon the tract will be designated in accordance with the public land system of designations and you will be informed thereof and the party, if entitled thereto, will be permitted to purchase the land in accordance with Circular No. 1079.

4. All deeds which are in Spanish should be accompanied by a translation thereof. The practice of submitting deeds in a foreign language is objectionable.

5. The forms submitted by you have been examined and no objection is found thereto. The forms already prepared for submitting proof on small holding claims are acceptable, however, and no reason appears for officially adopting new forms. The proof submitted, however, should clearly indicate that the party is entitled to purchase the lands under the act of June 8, 1926.

Very respectfully,

Thos. C. Havell,
Acting Commissioner.

Approved September 29, 1926.

E. C. Finney,
First Assistant Secretary.

CIRCULAR NO. 1186

LAND HELD UNDER COLOR OF TITLE FOR MORE THAN 20 YEARS—ADVERSE POSSESSION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 15, 1929.

Registers, United States Land Offices.

SIRS: Attention is called to the act of December 22, 1928 (45 Stat. 1069), Seventieth Congress, entitled "An act to authorize the Secretary of the Interior to issue patents for lands held under color of title," which provides:

> That whenever it shall be shown to the satisfaction of the Secretary of the Interior that a tract of public land, not exceeding one hundred and sixty acres, has been held in good faith and in peaceful, adverse, possession by a citizen of the United States, his ancestors or grantors, for more than twenty years under claim or color of title, and that valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation, the Secretary may, in his discretion, upon the payment of not less than $1.25 per acre, cause a patent to issue for such land to any such citizen: *Provided,* That where the area so held is in excess of one hundred and sixty acres the Secretary may determine what particular subdivisions, not exceeding one hundred and sixty acres, may be patented hereunder: *Provided further,* That coal and all other minerals contained therein are hereby reserved to the United States; that said coal and other minerals shall be subject to sale or disposal by the United States under applicable leasing and mineral land laws, and permittees, lessees, or grantees of the United States shall have the right to enter upon said lands for the purpose of prospecting for and mining such deposits: *And provided further,* That no patent shall issue under the provisions of this act for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant.
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> SEC. 2. That upon the filing of an application to purchase any lands subject to the operation of this act, together with the required proof, the Secretary of the Interior shall cause the lands described in said application to be appraised, said appraisal to be on the basis of the value of such lands at the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands by the applicant or his predecessors in interest, and in such appraisal the Secretary shall consider and give full effect to the equities of any such applicant.

1. This act authorizes the Secretary, in his discretion to issue patents for not more than 160 acres of public land, to citizens of the United States, who have, or whose ancestors or grantors have held the land in peaceable, adverse, possession for more than 20 years under claim or color of title, upon payment for the land at not less than $1.25 per acre.

2. Only claims for surveyed lands will be recognized under this act. If unsurveyed land is claimed, the filing of such claim should be deferred until the land has been surveyed and the plat of survey thereof has been officially filed.

3. Applications under this act must be filed with the register of the district land office for the district in which the land thus applied for is situated; or if there is no district land office in the State where the land is situated, then the application must be filed with the Commissioner of the General Land Office, Washington, D. C.

4. No special forms of application are provided. The application must be under oath and in typewritten form, or in legible manuscript.

5. Persons applying for patent under the provisions of this act must show by affidavit that their possession, or the possession of their ancestors or grantors for the 20 years next preceding the filing of the claim has been peaceable and adverse, by setting forth the facts of the possession and not merely the conclusions, and that such application is made in good faith for their own benefit and not for the benefit of any other person.

6. If improvements have been placed upon the land applied for, the nature and value thereof should be set forth, together with the time of their construction, and cost, and by whom constructed.

7. If any of the land has been reduced to cultivation, the amount of land claimed to have been so reduced, when it was so reduced, and the nature of the cultivation should be set forth.

8. If the claimant is claiming as a record owner or under color of title he will be required to file an abstract of title certified to by a competent abstractor showing the record of all conveyances of the land up to the date of the filing of the application. If he is not a record owner and no abstract of title can be furnished he will be required to file affidavits setting forth the names of all the mesne possessors of the land, periods held by each, giving the dates and how each possessor acquired possession of the land; the date the claimant took possession of the land, how he acquired possession thereof and the manner in which each of the possessors has maintained possession of the land.

9. If the claimant is a natural person, the affidavit should set forth whether the claimant is a male or a female and whether the claimant is a native born or a naturalized citizen of the United States. If claimant is a female, the affidavit should set forth whether she is married or single, and if married the date of her marriage and the facts concerning her husband's citizenship. If the claimant is a naturalized citizen of the United States a certified copy of the certificate of naturalization should be filed. In case the land is claimed by a corporation, a certified copy of the articles of incorporation should be filed.

10. The said act does not contemplate the recognition of any claim for more than 160 acres (or approximately that area, under the rule of approximation), and no person claiming more than approximately 160 acres will be permitted by transfer of portions of the land claimed to secure recognition of his claim, through himself and his grantees, for more land in the aggregate than he could purchase in his own name. It must be shown in each case that the land claimed is not part of a claim which embraced more than approximately 160 acres on December 22, 1928, or if the land claimed is part of such a larger claim the full facts relative thereto must be shown.

11. The claimant must in each case show whether or not he has filed any other claim under the said act, and if he has filed another claim he must identify it.

12. Every material fact stated in the claimant's affidavit or proof or necessary to the validity of his claim not established by competent

documentary evidence must be substantiated by the affidavits of not less than two disinterested persons having knowledge of the facts.

13. If the land applied for has been surveyed, and is subject to purchase under this act, the register when the application is filed in a district land office, after the assignment of a serial number thereto, will note the application on his records and will promptly forward same to the Commissioner of the General Land Office. Where there is no district land office, and the application is filed directly in the General Land Office, the proper notations will be made on the records of the General Land Office. When such application has been received in the General Land Office, it will be promptly forwarded to the proper field division for appraisement in accordance with the terms of the act.

14. The appraisement shall be made on the basis of the value of such lands at the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands by the applicant or his predecessor in interest.

15. If, upon consideration of the application in the General Land Office with report and appraisement it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified at once, by registered mail, that he must within 30 days from service of notice, deposit with the register of the district land office, where there is a district land office in the State where the land is situated, or with the receiving clerk of the General Land Office, where there is no district land office, the appraised price or thereafter and without further notice, forfeit all rights under his application, whereupon the land will be subject to disposal under applicable laws.

16. Upon the payment of the appraised price of the land, in the district land office, when there is one in the State, or in the General Land Office, notice for publication will be issued in the following form:

> Notice is hereby given that ——— ——— (name of applicant), of ——— (post-office address), has applied under the act of Congress approved December 22, 1928, 45 Stat. 1069, to purchase ———, section ——, township ——, range ——, meridian ———, State of ———, claiming under ——— (grounds of claim).
>
> All persons claiming the lands adversely will be allowed until ——— ———, to file in this office their objections to the issuance of patent under the aforesaid application, copy of objection to be served on the applicant. The appraised price of the land is ———.

Such notice shall be published at the expense of the applicant in a newspaper of general circulation, designated by the register or the commissioner, as the case may be, in the vicinity of the land applied for. If it be a daily paper, the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues.[a]

The first day of publication must be at least 30 days before the date set in the notice before which protests shall be filed. A copy of the notice will be posted in the district land office, or in the General Land Office, as the case may be, during the entire period of publication. The applicant must file evidence showing that publication has been had for the required time, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.

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[a] See instructions of Oct. 19, 1929, p. 1149.

17. Upon submission of satisfactory proof of publication and posting as provided in the foreging rule, if no protest or contest is pending or no other objection appears, final certificate will be issued. Such certificate shall bear upon its face the following: Patent to contain reservation of coal and all other minerals, and conditions and limitations provided by the act of December 22, 1928. There will be incorporated in patents issued on such entries the following: Excepting and reserving, however, to the United States all coal and other minerals in the lands so entered and patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said lands for the purpose of prospecting for and mining such deposits as provided by the act of December 22, 1928.

18. The said act of December 22, 1928, impliedly repeals and supersedes the local act of June 8, 1926 (44 Stat. 709), relating only to New Mexico.

Very respectfully,

Thos. C. Havell,
Acting Commissioner.

Approved April 15, 1929.

Jos. M. Dixon,
First Assistant Secretary.

Circular No. 1191

LANDS HELD UNDER COLOR OF TITLE IN THE STATE OF MICHIGAN

Department of the Interior,
General Land Office,
Washington, June 5, 1929.

The act of February 16, 1929 (45 Stat. 1188), Seventieth Congress, provides:

> That if within five years after passage of this act it shall be shown to the satisfaction of the Secretary of the Interior that a tract or tracts of public land in the State of Michigan, not exceeding in the aggregate one hundred and sixty acres, has or have been held in good faith and in peaceable, adverse possession by a citizen of the United States, his ancestors or grantors, for more than twenty years prior to the approval of this act under claim or color of title, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, the Secretary may, in his discretion, upon the payment of $1.25 per acre, cause a patent or patents to issue for such land to any such citizen: *Provided*, That the term "citizen," as used herein, shall be held to include a corporation organized under the laws of the United States or any State or Territory thereof.

1. Applications under this act must be filed with the Commissioner of the General Land Office, Washington, D. C., within five years from the passage of this act.

2. No special forms of application are provided.

3. The applicant must show that he is a citizen of the United States and if a naturalized citizen, he must furnish record evidence thereof. In case the application is made by a corporation, a certified

copy of the articles of incorporation should accompany the application.

4. The land desired to be purchased should be described as accurately as possible. If it can be described according to public land surveys it must be so described in the application, or if the tract applied for is in the rear of a private land claim, the tract so applied for should be described with reference to the front tract and also with reference to abutting side tracts.

5. Persons applying for patent under the provisions of this act must show by affidavit that their possession, or the possession of their ancestor or grantors for the 20 years next preceding the filing of the claim has been peaceable and adverse, by setting forth the fact of the possession and not merely the conclusions, and that such application is made in good faith for their own benefit and not for the benefit of any other person.

6. If improvements have been placed upon the land applied for, the nature and value thereof should be set forth, together with the time of their construction and cost and by whom constructed.

7. If any of the land has been reduced to cultivation, the amount of land claimed to have been so reduced, when it was so reduced, and the nature of the cultivation should be set forth.

8. The claimant will be required to file an abstract of title certified to by a competent abstractor showing the record of all conveyances of the land up to the date of the filing of the application or if he is not a record owner and no abstract of title can be furnished, he will be required to file affidavits setting forth the names of all the mesne possessors of the land, periods held by each, giving the dates and describing the manner in which each possessor acquired possession of the land; the date the claimant took possession of the land, how he acquired possession thereof, and the manner in which each of the possessors has maintained possession of the land.

9. The said act of February 16, 1929, does not contemplate the recognition of any claim for more than 160 acres (or approximately that area under the rule of approximation), and no person claiming more than approximately 160 acres will be permitted by transfer of portions of the land claimed to secure recognition of his claim through himself and his grantees for more land in the aggregate than he could purchase in his own name. It must be shown in each case that the land claimed is not a part of a claim which embraced more than 160 acres on February 16, 1929, or if the land claimed is part of such a larger claim, the full facts relative thereto must be shown.

10. Every material fact stated in the claimant's affidavit, or proof, or necessary to the validity of his claim, not established by competent documentary evidence, must be substantiated by the affidavits of not less than two disinterested persons having knowledge of the facts.

11. The application should be accompanied by payment of the purchase price of the land applied for at the rate of $1.25 per acre.

12. If upon consideration of the application in the General Land Office, it is determined that the applicant is entitled to purchase the tract applied for, notice for publication will be issued by the Commissioner of the General Land Office to be published at the expense

of the applicant in a newspaper of general circulation designated by the Commissioner of the General Land Office, in the vicinity of the land applied for. If it be a daily paper, the publication must be inserted in 30 consecutive issues; if daily, except Sundays, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues.[b]

The first day of publication will be set at least 30 days before the date set in the notice before which protests shall be filed. A copy of the notice will be posted on the bulletin board in this department and a copy of the notice must also be posted on the land during the entire period of publication. The applicant must file an affidavit that the notice was so posted on the land, and the usual affidavit of the publisher, accompanied by a copy of the notice published.

13. Upon submission of satisfactory proof of publication and posting as provided in the foregoing rule, if no protest or contest is pending and no other objection appears, final certificate will be issued followed by patent.

14. The general color of title act of December 22, 1928 (45 Stat. 1069), will be held not to apply in the State of Michigan until expiration of the period of five years from the passage of the special act of February 16, 1929, supra.

15. The withdrawal of April 23, 1926, by Executive Order No. 4430 is still in effect in Michigan, by which public lands of the United States, pending classification and legislation, were withdrawn as follows:

> All lands bordering on meandered lakes and all islands therein in the States of Michigan and Wisconsin, and all lands within three miles of the shore of Lakes Michigan, Huron, or Superior, in said States and all islands within the lakes last mentioned.

The said act of February 16, 1929, is held to justify the allowance of a proper claim thereunder, notwithstanding the said withdrawal.

C. C. MOORE, *Commissioner.*

Approved June 5, 1929.

JOHN H. EDWARDS,
Assistant Secretary.

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[b] See instructions of Oct. 19, 1929, p. 1149.

of the applicant in a newspaper of general circulation designated by the Commissioner of the General Land Office, in the vicinity of the land applied for. If it be a daily paper, the publication must be inserted in 30 consecutive issues; if daily, except Sundays, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues.[5]

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The said act of February 16, 1929, is held to justify the allowance of a proper claim thereunder, notwithstanding the said withdrawal.

C. C. Moore, *Commissioner.*

Approved June 5, 1929.

John H. Edwards,
Assistant Secretary.

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[5] See instructions of Oct. 19, 1929, p. 1149.

CONFIRMATION [a]

CIRCULAR NO. 879[1]

INSTRUCTIONS UNDER SUPREME COURT DECISIONS INVOLVING CONFIRMATION UNDER SECTION 7, ACT OF MARCH 3, 1891

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 9, 1923.

Chiefs of Field Divisions.

SIRS: I inclose herewith for your information a photographic copy of the decision of the Supreme Court of the United States in Thomas J. Stockley et al., appellants, *v.* the United States, decided January 2, 1923.

The court held in said case that after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, such entryman is, there being no pending contest or protest against the validity of such entry, entitled to patent under the proviso to section 7 of the act of March 3, 1891, regardless of whether the register's final certificate has issued or not.

The Supreme Court of the United States in Payne *v.* Newton (255 U. S. 438), decided that Newton was entitled to a patent on his homestead entry under the proviso to section 7 of the act of March 3, 1891, two years having elapsed from the date of the issuance of the receiver's final receipt upon final entry, and there being no contest or protest pending against the validity of the entry, but stated that the purpose of the statute was:

> To require that the right to a patent which for two years has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay, and thus to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry, as would be the case if the patent were issued in the absence of the statute.

Patent was issued to Newton in accordance with the said decision of the Supreme Court, but the department has been officially advised by the Department of Justice that a suit has been instituted to set aside the patent.

You will immediately carefully examine your records to determine the cases affected by said decisions, and divide such cases into two groups as follows:

(1) Entries in which the 2-year period will elapse during the coming field season.

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[a] Instructions relating to the confirmation of entries are also printed under the title Board of Equitable Adjudication, p. 311.

[1] See instructions of May 26, 1924, p. 1247.

(2) Entries which are already confirmed under said court decisions.

In the matter of the first group you will have investigations made and reports submitted in time for this office to take action against such entries as are found bad, within the 2-year period, making your investigations special and your recommendations by wire as to cases nearing confirmation, if necessary.

As to entries within the second group, you will have investigations made as soon as practicable, and where it is found that an entryman did not comply with the law and made a false and fraudulent proof make recommendation as to whether, in the event patent is issued under the confirmatory proviso to the act of March 3, 1891, suit should be instituted to set it aside.

You will at once examine your dockets of cases pending for hearing and postpone hearings on any which appear to be confirmed and report them to this office for action.

This office has in the past proceeded against and canceled entries which could be held to be confirmed under said court decisions. Such cases will, upon proper application, be reinstated and patented as confirmed, provided the lands are not appropriated by a claimant under the homestead or desert land laws or patented to a claimant under other public land laws. This office will then consider the question as to whether the patents so issued shall be attacked and direct such field investigations as may be necessary. Where, however, the lands in such canceled entries have been patented to others or are appropriated by claimants under the homestead or desert land laws, no action will be taken by this office looking toward the reinstatement of the canceled entries, but the entrymen will be left to their remedy under the act approved January 27, 1922 (42 Stat. 359), which provides:

> In all cases where a final entry of public lands has been or may be hereafter canceled, and such entry is held by the Land Department or by a court of competent jurisdiction to have been confirmed under the proviso to section 7 of the act of March 3, 1891 (Twenty-sixth Statutes, page 1099), if the land has been disposed of to or appropriated by a claimant under the homestead or desert-land laws, or patented to a claimant under other public-land laws, the Secretary of the Interior is authorized, in his discretion, and under rules to be prescribed by him, to change the entry and transfer the payment to any other tract of surveyed public land, nonmineral in character, free from lawful claim, and otherwise subject to general disposition: *Provided*, That the entryman, his heirs, or assigns shall file a relinquishment of all rights, title, and interest in and to the land originally entered: *Provided further*, That no right or claim under the provisions of this paragraph shall be assignable or transferable.

Instructions under said act of January 27, 1922, are contained in Circular No. 817 (48 L. D. 595).

Respectfully,

William Spry,
Commissioner.

Approved March 9, 1923.

E. C. Finney,
First Assistant Secretary.

(Copy of decision omitted.)

DESERT-LAND ENTRIES

CIRCULAR No. 443

FORMS 4-375 AND 4-375A

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 9, 1915.

Registers and Receivers, United States Land Offices.

SIRS: By Circular No. 374 (43 L. D. 494), you were directed to furnish to proof-taking officers the revised forms for taking final proofs on homestead entries.

The directions contained in said circular are hereby extended to include Forms 4–375 (testimony of claimant), and 4–375a (testimony of witness), a supply of which was recently sent to all offices having desert-land entries.

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner.

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR No. 519

PROCEDURE IN CASES OF RELIEF GRANTED UNDER ACT OF MARCH 4, 1915

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 12, 1917.

Registers and Receivers, United States Land Offices.

GENTLEMEN: When transmitting notices of election to purchase (under the third paragraph of the applicable portion of the act of March 4, 1915, 38 Stat. 1161), you will be careful always to inclose evidence of the date of service of notice of the relief granted. Notices in all cases are to be served by registered mail (or personally, with written, signed acknowledgment secured), and evidence thereof in each case is to be forwarded to this office together with the election to purchase if filed, or with the report of no action taken by claimant if such be the case. Whether election be filed or no action be taken within the 60 days allowed, proper notations are to be made on your records, showing that the particular entry is to be completed under election to purchase or in the manner required of a homestead entryman, as the case may be.

Strict observance of this order will save much needless correspondence.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR NO. 658

INSTRUCTIONS RELATIVE TO DESERT-LAND APPLICATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 13, 1919.

Registers and Receivers, United States Land Offices.

SIRS: Hereafter you will notify desert-land applicants of the transmission of their applications to the chief of field division, for field investigation, and also notify them as follows:

No work, other than that necessary to ascertain if the land may be irrigated, is required to be done in connection with the land embraced in applications to make desert land entries, unless such applications are allowed, and desert-land applicants who do work on their claims prior to the allowance of their applications will, of course, suffer a loss of the work thus done, in case it should appear after a field investigation that their applications can not be allowed.

A printed form of letter will be furnished you for use in this relation.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR NO. 862

CIRCULAR NO. 861,[1] TO APPLY TO DESERT-LAND FINAL PROOFS AS WELL AS HOMESTEADS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 13, 1922.

Registers and Receivers, United States Land Offices.

GENTLEMEN: You are advised that the directions contained in Circular No. 861 apply to desert land as well as to homestead final proofs.

Very respectfully,

GEO. R. WICKHAM, *Acting Commissioner.*

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[1] Relative to proof in advance of naturalization. See p. 594.

[See 50 L. D. 443]

CIRCULAR NO. 474

REGULATIONS GOVERNING ENTRIES AND PROOFS UNDER THE DESERT-LAND LAWS

(Revised December 18, 1928)

(In this revision of the regulations of May 18, 1916 (45 L. D. 345), changes have been made in paragraphs 2, 3, 4, 5, 8, 9, 11, 13, 14, 15, 16, 18, 21, 22, 28, 30, 31, 32, 34, 35, 36, 41, and 51.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 20, 1924.

1. All the more important laws and portions of laws governing the making of desert-land entries, assignments thereof, and the proofs required, will be found printed in full at the end of this circular.

It seems to be the purpose of the statutes to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances, from more remote sources of supply: more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small, private irrigation system less permanent and efficient in character.

ENTRIES AND PROOFS UNDER THE DESERT LAND LAWS—STATES IN WHICH DESERT-LAND ENTRIES MAY BE MADE

2. The act of March 3, 1877, as amended by the act of March 3, 1891, provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

LANDS THAT MAY BE ENTERED AS DESERT LAND

3. As the desert land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. (See par. 13 of this circular.) In order to be subject to entry under the desert land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, nonmineral (except lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals, as hereinafter set forth), nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L. D. 522 and 42 L. D. 524.)

Under the act of June 22, 1910 (36 Stat. 583), lands which have been withdrawn or classified as coal lands, or are valuable for coal, may, if desert in character as above defined, be entered under the desert land law, provided such entry is made with a view to obtaining title with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same. By the act of July 17, 1914 (38 Stat. 509), similar provisions are made with respect to all lands which have been withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits.

Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with departmental instructions authorized by section 29 of said act. (See Instructions of October 6, 1920, 47 L. D. 474.) Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

WHO MAY MAKE DESERT-LAND ENTRY

4. Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the affidavit specified in paragraphs 8 and 9 of these regulations, can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

Under existing law (act of September 22, 1922, 42 Stat. 1022), a native-born woman does not lose her citizenship by marriage to an alien unless he be ineligible to become a citizen of the United

States; nor does a woman of alien birth acquire citizenship by marriage to a citizen of the United States. The marriage of an alien woman to a citizen of the United States takes the place of a declaration of intention. Under the act of March 2, 1907 (34 Stat. 1228), the citizenship status of the wife is declared to be that of the husband. Any woman seeking to make a desert-land entry, therefore, must show whether she is married or single, and, if married, must give the date of her marriage and the citizenship of her husband. If married between the dates herein specified, and her husband is naturalized or has declared his intention to become a citizen, or if the marital relation has ceased to exist, she may show that fact and, also, that she has resumed her American citizenship by one of the methods prescribed by the act of March 2, 1907. If after initiating a claim under the desert land laws a woman marries, she must show at the time of submission of final proof whether or not her husband is eligible to become a citizen of the United States.

A certified copy of the certificate of naturalization or declaration of intention, as the case may be, should accompany the application in every instance where required by the foregoing rules.

At the time of making final proof claimants of alien birth must have been admitted to citizenship, but a certified copy of the certificate of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

QUANTITY OF LAND THAT MAY BE ENTERED

5. Under the act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the act of March 3, 1891, the maximum area that may be embraced in a desert entry was reduced to 320 acres. This limitation must, however, be read in connection with the act of August 30, 1890 (26 Stat. 391), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws, and the amendment thereof by the act of February 27, 1917 (39 Stat. 946), allowing one who has entered 320 acres under the enlarged homestead laws to make a desert-land entry. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, or 320 acres under the enlarged homestead act, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, may, if otherwise qualified, enter 160 acres of land under the desert land laws. In other words, he may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres. It is to be noted also that the act of June 22, 1910 (36 Stat. 583), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area, and that a like restriction is made by the act of July 17,

1914 (38 Stat. 509), with reference to desert-land entries made for land withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or valuable for those deposits.

Entry of lands within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506), is limited to 160 acres. A special circular is issued under this act. (Circular No. 592,[a] approved March 6, 1918, 46 L. D. 307.)

SECOND ENTRY

A person's right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except, however, that under the act of September 5, 1914 (38 Stat. 712), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted thereafter to make another entry or to take one or any part thereof by assignment. Applications to make second entry must not be allowed by the registers and receivers, but must be forwarded by them, with appropriate recommendations, to the General Land Office, accompanied by the applicant's affidavit giving data from which his former application, or applications, entry, or entries may be identified (preferably its series and number, as well as a description of the tract by section, township, and range), and showing (*a*) what examination of the land and what inquiries as to its character he made prior to filing his previous application or applications for entry, and what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation; (*b*) what improvements he made upon the land, describing in detail their nature and cost, the date of his abandonment of the claim or claims and the reason therefor, and whether he ever executed a relinquishment of the entry or entries; and (*c*) what consideration, if any, he received for abandoning or relinquishing the entry or entries, and whether he sold the improvements thereon, giving full details as to such sale, if any, including the date thereof and the consideration received. This affidavit must be executed before a proper officer (see par. 11 of this circular) and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts; or, there may be several witnesses, each testifying on some material point. The affidavits of the witnesses may be executed before any officer authorized to administer oaths and having an official seal.

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[a] Circular No. 592 was revised June 3, 1927. See p. 729.

If the commissioner should find that the applicant is qualified to make a second entry, the application will be returned to the local officers for appropriate action in accordance with paragraph 13 of this circular.

LAND MUST BE IN COMPACT FORM

6. Land entered under these laws should be in compact form, which means that it should be as nearly a square form as possible. Where, however, it is impracticable, on account of the previous appropriation of adjoining lands or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered and the surrounding tracts should be stated, in order that the General Land Office may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the Land Department of the Government to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point.

HOW PREFERENCE RIGHT MAY BE ACQUIRED ON UNSURVEYED LAND

7. Prior to the act of March 28, 1908, a desert-land entry could embrace unsurveyed lands, but since the date of that act desert-land entries may not be made of unsurveyed lands. This act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the district land office.

To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A mere perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land, as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land law and must evidence good faith on the part of the claimant.

HOW TO PROCEED TO MAKE A DESERT-LAND ENTRY

8. A person who desires to make entry under the desert land laws must file with the register and receiver of the proper land office a declaration or application, under oath, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is also a bona fide resident of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086). He must also state that he has not previously exercised the right of entry under the desert land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, together with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within four years from the date of his application. This declaration must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or valuable therefor, the applicant must also state in his declaration that the same is made in accordance with and subject to the act of June 22, 1910 (36 Stat. 583), or the act of July 17, 1914 (38 Stat. 509), as the case may be.

As to lands embraced in applications, permits, or leases under the act of February 25, 1920, see paragraph 3 of this circular.

9. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The affidavit, which is made a part of the application, may not be made by an agent or upon information and belief, and the register and receiver must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the affidavits of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry. The declaration of applicant and the affidavit of his two witnesses must in every instance be made at the same time and place and before the same officer. (As to officers authorized to administer oaths in such cases, see par. 11 of this circular.)

The statements in the blank form of declaration and accompanying affidavits as to present character of the land may be modified so as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, oil, gas, and asphaltic minerals in case application is made under the provisions of the act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor.

As to lands embraced in applications, permits, or leases under the act of February 25, 1920, see paragraph 3 of this circular.

10. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the local officers of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them. The register and receiver will be careful to note the post-office address on their records.

11. The application and corroborating affidavits and all other proofs, affidavits, and oaths of any kind whatsoever required by law to be made by applicants and entrymen and their corroborating witnesses may be executed before the register or receiver of the land district in which the land is located, or before a United States commissioner, or a judge or clerk of a court of record, or before a duly qualified deputy clerk of court who regularly acts for the clerk and performs duties of the office in the name of his principal at the county seat, in the county or land district in which the land is situated, without any showing as to the nearness or accessibility of such officer, or outside both the county and land district, upon a showing by affidavit, satisfactory to the Commissioner of the General Land Office, that the officer so acting was, because of topographic or geographic conditions, nearer or more accessible to the land. Reference is had to Circular No. 884,[b] dated March 23, 1923 (49 L. D. 497), and Circular No. 894, dated May 8, 1923 (49 L. D. 586).

The application is not acceptable if executed more than 10 days before its filing at the local office.

EVIDENCE AS TO WATER RIGHT MUST ACCOMPANY APPLICATION

12. No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to pro-

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[b] Circular No. 884 was revised Sept. 3, 1926. See p. 1035.

cure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected.

PROPOSED IRRIGATION SYSTEM MUST BE PRACTICABLE

13. At the time of filing the declaration with the register and receiver the applicant must also file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i. e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a sworn statement must accompany the declaration, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, sworn evidence must be submitted as to the existence of such water supply upon or near the land involved, including a statement as to other wells theretofore sunk and affording a water supply to adjoining or near-by lands.

With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and the position and direction of the proposed permanent main and lateral ditches on the land, and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the act of March 3, 1891 (26 Stat. 1095), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The register and receiver will carefully examine the evidence submitted in such declarations, and either reject defective declarations or require additional evidence to be filed.

At the time of filing his declaration, plans, and the statements submitted therewith the applicant must pay the receiver the sum of

25 cents per acre for the lands therein described, the declaration to be given its proper serial number at that time, in accordance with existing regulations. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered. The receiver will issue a receipt for the money, and after proper notations have been made on the local office records the application will be transmitted to the proper chief of field division for report as to the sufficiency of the alleged water supply and the feasibility of the proposed plans. The register and receiver will furnish the chief of field division any facts in their knowledge with respect to the land, the water supply, or the proposed plan of irrigation, including the financial responsibility and general ability of the irrigation districts, corporations, or associations which propose to construct works for the reclamation of such land. In all cases the register and receiver will certify as to the status of the lands as shown by their records, and when forwarding an application for report they will attach all papers filed by the applicant. No application will be forwarded to the chief of field division until all evidence required as aforesaid has been furnished by the applicant; nor, in the case of an application for second entry, until the application has been transmitted to the Commissioner of the General Land Office for consideration and returned by him to the local officers.

When an application is received by the chief of field division he will have same considered by a field examiner, who will make a written report thereon recommending the allowance or rejection of the application. If such report is favorable and the chief of field division is of the opinion that the entry should be allowed, he will return the application to the register and receiver, with the report and recommendation to that effect, whereupon the register and receiver will pass upon it in regular order in the light of the report, which is to be attached to the application and become a part of the record, and in the absence of any objection will sign the certificate at the end of the declaration under date of its allowance and advise the applicant.

If, however, the chief of field division is of the opinion that the entry should not be allowed, he will have a full report prepared on the application and transmit the entire record to the General Land Office for consideration and action, advising the register and receiver thereof.

In the event that an applicant alleges a company, an association, or an irrigation district as the proposed source of water supply, upon which report has not been submitted, the chief of field division will cause an investigation to be made of such project and have a report submitted thereon to the commissioner, making a definite recommendation as to the allowance of original entries under the project, and will transmit the application involved with the report.

If the project alleged as the source of water supply has been reported upon, but no action on such report has been taken by the commissioner, the chief of field division will transmit the application to the General Land Office with appropriate recommendation. In the event the applicant alleges a project which has been passed upon by the commissioner, the chief of field division will consider same in accordance with the conclusions reached, and in the event that favorable action is warranted will return the papers to the register and receiver with proper report and recommendation. In case adverse action is necessary, the chief of field division will transmit the application to the General Land Office with proper recommendation.

Should the commissioner, after consideration of the examiner's report and the showing made by the applicant, deny the right to make entry, the applicant will be allowed the right to apply for a hearing or to appeal, as he may desire.

If an application is not returned by the chief of field division in time to be considered and allowed by the register and receiver and transmitted with the returns for the month during which filed, the register will note "To C. F. D" (giving date), in the remarks column of the "General schedule of serial numbers," and will forward with the returns for that month a separate report on Form 4–030 for each application so held by the chief of field division.

Registers and receivers will render any reasonable assistance to applicants and witnesses in preparing their declarations and affidavits, but it is no part of the duty of these officers to prepare, or assist in preparing, the map, plans, or evidence of water right required to be filed with the declaration. Intending applicants should cause all such documents and papers to be prepared in advance and have them ready for filing with the declarations.

ASSIGNMENTS

14. While by the act of March 3, 1891, assignments of desert-land entries were recognized, the Land Department, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous. (With regard to the assignment of desert-land entries within Government reclamation projects, see General Reclamation Circular.)

15. The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under the act of September 5, 1914, to make a second entry, he can not take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second entry. The right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking one by assign-

ment, unless such entry be subsequently lost, forfeited, or abandoned because of matters beyond the claimant's control.

A person who has the right to make a second desert-land entry under the act of September 5, 1914, may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned. The right to make a second desert-land entry, however, is not possessed by any person who has assigned some former entry or part thereof. (See par. 5.)

The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

16. As stated above, desert-land entries may be assigned, in whole or in part, and as evidence of the assignment there should be transmitted to the General Land Office the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases a copy certified by such officer will be accepted. Attention is called to the fact that copies of deeds of assignment certified by notaries public or justices of the peace, or, indeed, any other officer than those who are qualified to take proofs and affidavits in desert-land cases, will not be accepted.

An assignee must file with his deed of assignment an affidavit (Form 4–274c), showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a certified copy of his declaration of intention to become a citizen or a certified copy of his certificate of naturalization, as the case may be. If the assignee is a woman, she should in all cases state whether or not she is married, and if so, show that in accordance with the rules explained in paragraph 4 her citizenship is not lost by reason of the alienage of her husband. In short, the assignee must prove that he possesses all the qualifications necessary to enable him to make a desert-land entry for the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L. D. 541, 33 L. D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L. D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L. D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgments of deeds, but the assignee must execute the affidavit as to his qualifications, (Form 4—274c), and all other required oaths and affidavits before some one of the officers specified in paragraph 11 of this circular.

No assignments of desert-land entries or parts of entries are conclusive until examined in the General Land Office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert land law, and to whom, therefore, recognition of the assignment is refused by the General Land Office, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L. D. 90 and 48 L. D. 519.

After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the General Land Office, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen.

Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506), may be taxed and otherwise dealt with as provided by said act. (See Circular No. 592, referred to in par. 5.)

A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper local land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Land Department with reference to the entry. The register and receiver will report all such claims by separate letters, to be forwarded with their current returns to the General Land Office.

ANNUAL PROOF

17. In order to test the sincerity and good faith of claimants under the desert land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the act of March 3, 1891, made the r

quirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for three years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made. Proof of these expenditures must be made before some officer authorized to administer oaths in public-land cases. (See par. 11 hereof.)

This proof, which is known as yearly or annual proof, must consist of the affidavits of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. The testimony of such witnesses may be supplemented by the affidavit of the claimant, at his option, but he is not required by law to make oath as to the annual expenditures upon or for the benefit of the land. (42 L. D. 165.) Annual proofs must contain itemized statements showing the manner in which expenditures were made.

ACCEPTABLE EXPENDITURES

18. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley *v.* Vasold, 36 L. D. 106.) (See Circular No. 933,[c] dated April 26, 1924.)

EXPENDITURES NOT ACCEPTABLE

Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L. D. 601 and 42 L. D. 523.)

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[c] Circular No. 933 added two paragraphs to section 18 of Circular No. 474, both of which are printed as a part of said section. Circular No. 933 is not carried in this publication.

Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land, will not be accepted. (See Circular No. 933,[c] dated April 26, 1924.)

No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a special agent, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the General Land Office. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

Registers and receivers are instructed to examine carefully all annual proofs filed and are authorized to suspend them, with notice to claimants to cure defects within 30 days, or to reject them, subject to the usual right of appeal to the Commissioner of the General Land Office. These proofs are to be forwarded with the regular monthly returns. However, no annual proof which alleges an expenditure for stock or interest in an irrigation company should be rejected merely because the expenditure was of that character unless such rejection be warranted under instructions issued by the Commissioner of the General Land Office in acting upon the special agent's report on the particular company in question. If no such instructions have been issued, and the company referred to in the annual proof be one on which the local officers have not previously requested a report from the proper chief of field division, they will immediately call for such report and advise the commissioner thereof by special letter.

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[c] Circular No. 933 added two paragraphs to section 18 of Circular No. 474, both of which are printed as a part of said section. Circular No. 933 is not carried in this publication.

They will also indorse the fact and date of the call upon the margin of the annual proof and forward it to the General Land Office with the regular returns.

NOTICE TO DELINQUENT CLAIMANTS

Local officers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the fact that notice was served upon the claimant should be reported to the General Land Office, with evidence of service, whereupon the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

EXTENSION OF TIME FOR FILING ANNUAL PROOF NOT ALLOWED

The law makes no provision for an extension of time in which to file annual proof on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the reclamation act of June 17, 1902 (32 Stat. 388), and extensions for said purpose can not therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L. D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

19. Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the three years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

FINAL PROOF

20. The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed four years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly

cultivated and irrigated, and when the requirements of the desert land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

NOTICES OF INTENTION TO MAKE FINAL PROOF

When an entryman has reclaimed the land and is ready to make final proof, he should apply to the register and receiver for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an indorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

PUBLICATION OF FINAL-PROOF NOTICE

21. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L. D. 131; 43 L. D. 216), and must also be posted in a conspicuous place in the local land office for the same period of time. The claimant must pay the cost of the publication, but it is the duty of registers to procure the publication of proper final-proof notices, and registers should accordingly exercise the utmost care in that behalf. (40 L. D. 459.) The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The register will certify to the posting of the notice in the local office.

22. On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the four years prescribed by law, or within

the period of an extension granted for submitting such proof, an affidavit should be filed by claimant, with the proof, explaining the cause of delay.

OFFICERS QUALIFIED TO TAKE FINAL PROOF

The final proof may be made before any one of the officers named and under the conditions prescribed in paragraph 11.

No showing by affidavit need be made where final proof is taken outside the county or land district in which the land is located, if the proof be taken in the town or city where the newspaper is published in which the final-proof notice is printed.

SHOWING REQUIRED ON FINAL PROOF AS TO IRRIGATION, CULTIVATION, AND WATER RIGHTS

23. The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

24. While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L. D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L. D. 269.)

25. As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock

has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L. D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

26. In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L. D. 305.)

It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, can not be viewed as meeting the requirements of the desert land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

27. Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field agents as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are being made as rapidly as possible, and it is the purpose of the General Land Office to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the

amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof or subsequently, such evidence as he can tending to support his contentions.

Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the local officers will indorse the name and address of the project upon the copy of the notice to be forwarded to the chief of field division. If the report on the company has been acted upon by the General Land Office and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the local officers will suspend the proof, advise the claimant of the requirements made by the General Land Office in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time they will reject the proof, subject to the usual right of appeal. If application for hearing be filed, the local officers will transmit one copy thereof to the proper chief of field division and forward the other copy, with the final proof record, to the General Land Office.

FINAL PROOF EXPIRATION NOTICE

28. Where final proof is not made within the period of four years, or within the period for which an extension of time has been granted, the register and receiver should send the claimant a notice, addressed to him at his post-office address of record, informing him that he will be allowed 90 days in which to submit final proof; or if the death of the claimant of record be suggested, such notice should also be addressed to the claimant at the post office nearest the land. (44 L. D. 364.)

Should no action be taken within the time allowed, the register and receiver will report that fact, together with evidence of service, to the General Land Office, whereupon the entry will be canceled. The notice provided for in this paragraph must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

FINAL PROOF NOT REQUIRED WHILE TOWNSHIP IS SUSPENDED FOR RESURVEY, BUT MAY BE SUBMITTED AT CLAIMANT'S OPTION—PROCEDURE

No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L. D. 223.) This also applies to annual proof. (See par. 18.) In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township. If submitted, the final proof will be received by the local officers, who will pursue the same course in regard thereto that would have been pursued in the absence of the suspension. Should final certificate be issued on any such proof, it will describe the entered land in terms of the original survey with reference to the plat of such survey and to the fact of a pending resurvey, as follows:

In accordance with official plat of survey approved ______; resurvey now pending under Group No. ______ G. L. O.; authorization dated ______

EXTENSION OF TIME FOR SUBMITTING FINAL PROOF

29. There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (34 Stat. 519, sec. 5); March 28, 1908 (35 Stat. 52, sec. 3); April 30, 1912 (37 Stat. 106); March 4, 1915 (38 Stat. 1138–1161, sec. 5); and February 25, 1925 (43 Stat. 982). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the reclamation act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said act of June 27, 1906, see General Reclamation Circular. The act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this act denies any extension under its terms to claimants who can obtain such benefit under prior acts. For regulations governing extensions under the act of March 4, 1915, see paragraphs 34 to 36 of this circular.

30. Under the provisions of the act of March 28, 1908, the period of four years may be extended, in the discretion of the Commissioner of the General Land Office, for an additional period not exceeding three years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the four years. This does not mean that the period within which proof may be made will be extended as a matter of course for three years. The statute authorizes the Commissioner of the General Land Office to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding three years, but applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of four years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L. D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

Under the provisions of the act of April 30, 1912, the Secretary of the Interior may, in his discretion, in addition to the extension authorized by previous legislation, grant to any entryman under the desert land laws a further extension of time for submitting final proof, not exceeding three years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension can not be granted for a period of more than three years nor affect contests initiated for a valid existing reason. Said act also provided:

An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the register and receiver an affidavit setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This affidavit should be executed before one of the officers named in paragraph 11 of this circular and must be corroborated by two witnesses who have personal knowledge of the facts; and the register and receiver, after carefully considering all of the facts, will forward the application to the proper chief of field division, with appropriate recommendation, and advise the Commissioner of the General Land Office of such reference.

The register and receiver are required to suspend any application for extension of time if they consider the affidavit defective in form or substance, allowing the applicant a reasonable time to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, and advising the applicant that upon his failure to take any action within the time specified appropriate recommendations will be made. After the expiration of the time thus granted the original application and the amended affidavits or exceptions, as the case may be, together with proper report and recommendations of the register and receiver, will be transmitted to the chief of field division.

Applications for further extension of time under the act of April 30, 1912, and February 25, 1925, may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915, as amended.

PROCEDURE ON APPLICATIONS FOR EXTENSION OF TIME FOR FINAL PROOF WHERE CONTEST IS PENDING

31. A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L. D. 603.)

Consideration by the General Land Office of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges. (See Circular 174,[d] dated September 27, 1912.)

PAYMENTS—FEES

32. At the time of making final proof the claimant must pay to the receiver the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the act of March 4, 1915. (See pars. 42 and 48 of this circular.) The receiver will issue a receipt for the money paid, and if the proof is satisfactory, the register will issue a certificate in duplicate and deliver one copy to the claimant and forward the other copy to the General Land Office with the regular returns.

If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

When final proof is made on an entry made prior to the act of March 28, 1908, for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the register and receiver will approve same and forward it to the General Land Office without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the register and receiver. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the local offices the registers and receivers will, without awaiting further instructions from the General Land Office, examine their records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, they will call upon the claimants thereof to file an affidavit of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries. The local officers will then note these adjustments on their tract books and plats and transmit the affidavits to the General Land Office with separate reports of all conflicts which may have been developed. They will also report any case in which the claimant has failed, after due notice, to file the required affidavit of adjustment.

If final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory by the General Land Office and no conflicts or other objections are apparent, the register and receiver will allow claimant 60 days within which to make final payment for the land, and upon receipt of the same the register will issue final certificate which will be transmitted to the General Land Office with the returns for the current month.

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[d] Section 31 of Circular No. 474 is based on instructions contained in Circular No. 174. Circular No. 174 is not carried in this publication.

33. No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of March 4, 1915 (see pars. 42 and 47 of this circular), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making final proof. Where final proofs are made before the register or receiver in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, they will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States they will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them.

RELIEF UNDER ACT OF MARCH 4, 1915 (38 STAT. 1138–1161), AMENDED BY ACT OF MARCH 21, 1918 (40 STAT. 458)

34. The last three paragraphs of section 5 of the act of Congress approved March 4, 1915 (38 Stat. 1138–1161), entitled "An act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes,"[7] as amended by the act of March 21, 1918 (40 Stat. 458), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This new law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding three years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms. The following rules and regulations (approved April 13, 1915, Circular 399, and here printed without substantial change) will be observed in the administration of said provisions of law.

APPLICATIONS FOR RELIEF

35. All applications for the benefits of the new law should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered land is situated, to be referred to the proper chief of field division with appropriate recommendation, and the Commissioner of the General Land Office to be advised of such reference. They must be supported by the affidavit of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown. All such affidavits must be executed before an officer authorized to administer oaths in desert-land cases. (See par. 11.)

All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that if an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law.

CONDITIONS FOR EXTENSION OF TIME

36. To entitle an entryman to the benefits of the first of the three paragraphs referred to, the following conditions must exist: (1) The entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

The existence of the first two of these conditions can be determined by examination of the records of the General Land Office, but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land, but not used as the basis of annual proof.

The existence of the third, fourth, and fifth conditions above enumerated must be established in all cases by the affidavits filed in support of the application for relief.

With regard to the third condition, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the source of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

If water is to be obtained through an irrigation company, association, or district upon which a special agent or other officer has made a favorable report, and favorable action on such report has been taken, the existence of the third condition will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

The fourth condition above enumerated will be satisfied if the case does not come within the terms of any of the other acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

As explained in paragraph 29, the extension of time authorized by the act of March 4, 1915, is applicable only to entries made prior to the date of the act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where, on account of drought of greater or less duration, but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the act of March 4, 1915, as amended by the act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the act of June 17, 1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the act of June 27, 1906.

No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert land law.

OTHER FORMS OF RELIEF

37. The second and third paragraphs of the new law are designed to afford relief in cases of the kind last above mentioned by authorizing the Secretary of the Interior, in his discretion, to

permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof.

CONDITIONS AUTHORIZING HOMESTEAD PROOF AND PURCHASE

38. To entitle a claimant to relief under either of these paragraphs, it must be made to appear to the satisfaction of the Secretary of the Interior, (1), that the entry in question is a lawful pending entry, made prior to March 4, 1915; (2), where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (3), that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and, (4), that there is no reasonable prospect that if the extension of time authorized under the provisions of this act, or any other existing law, were granted the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof. The first two of these conditions can be determined from the records of the General Land Office.

With regard to the third condition, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

With regard to the fourth condition, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any special agent's reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted.

NOTICE OF ALLOWANCE OF RELIEF—ELECTION TO PURCHASE

39. When any application for relief under the second paragraph shall have been allowed by the Commissioner of the General Land Office, notice thereof will be served through the proper local land office upon the claimant, advising him that he will be allowed five years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the local land office an election to perfect the entry within five years by purchase under the third paragraph, and pay to the receiver, at

time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election will be forwarded to the General Land Office with the regular monthly returns and must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith.

40. In the submission and consideration of final proofs under the second and third paragraphs, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase.

41. After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the second and third paragraphs of the act as amended by the act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the act as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases.

ENTRIES PERFECTED BY COMPLIANCE WITH HOMESTEAD LAW

42. A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the enlarged homestead acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular " minimum price " of $1.25 per acre.

Failure to submit final proof within the 5-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the board of equitable adjudication for confirmation.

Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries.

43. If not already residing on his desert-land entry, the claimant must establish residence thereon within six months from the date of receiving the notice advising him that he will be permitted to perfect

his entry under the second paragraph, unless such period be extended as permitted by the homestead law.

Residence upon the land must be continuously maintained for a period of three years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed five months. Actual residence must be maintained for the remaining seven months of each year. If commutation proof is submitted, substantialy continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements made by this circular as to the period of residence and amount of cultivation are those of the act of June 6, 1912 (37 Stat. 123), or the "3-year homestead law."

If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith.

44. Cultivation of the land for at least two years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generaly followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed.

45. If the entry is situated in the States of Utah or Idaho, and the lands involved have been, or shall be, designated as being of the character subject to entry under the sixth sections of the act of February 19, 1909 (35 Stat. 639), as amended, or June 17, 1910 (36 Stat. 531), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of four years. For further details, reference should be made to the circular of this office known as Suggestions to Homesteaders, copies of which may be obtained of this office or any local land office.

46. If an entryman dies before being authorized to exercise the rights conferred by the second and third paragraphs, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the new law may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of three years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had be survived.

With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases.

47. The same fees, and no others, may be charged by registers and receivers upon submission of final proofs under the new law as upon submission of ordinary desert-land proofs. (See par. 33.) No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office.

ENTRIES PERFECTED BY PURCHASE

48. If claimant elects to perfect his entry under the third paragraph he must, within five years from the date of his election and payment of the sum of 50 cents per acre, make final proof and pay to the receiver the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has in good faith used the land for agricultural purposes for at least three years. Under this third paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown.

49. Improvements made during the first three years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under this section, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing

that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry.

50. If a claimant fails to make final proof and payment, as required by the third paragraph, within the 5-year period, all sums theretofore paid by him will be forfeited and the entry canceled.

FORM OF PROOFS

51. Final proofs under the second paragraph may be made on the forms used in homestead cases. For final proofs to be made under the third paragraph special forms have been provided.

CONTESTS AND RELINQUISHMENTS

52. Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the land department.

Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the register will give the same notice and is entitled to the same fee for notice as in other cases.

53. A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the local land office the entries will be canceled by the register and receiver in the same manner as in homestead, preemption, and other cases under the first section of the act of May 14, 1880 (21 Stat. 140). Conditional relinquishments will not be accepted.

54. All previous rulings and instructions not in harmony herewith are hereby vacated.

William Spry, *Commissioner.*

Approved May 20, 1924.

E. C. Finney, *First Assistant Secretary.*

(Acts omitted.)

Circular No. 1188

RELIEF OF DESERT-LAND ENTRIES, ACT OF MARCH 4, 1929

Department of the Interior,
General Land Office,
Washington, April 19, 1929.

Registers, United States Land Offices.

Gentlemen: Your attention is directed to the act of March 4, 1929 (45 Stat. 1548), entitled "An act to supplement the last three paragraphs of section 5 of the act of March 4, 1915 (38 Stat. 1161), as amended by the act of March 21, 1918 (40 Stat. 458), which provides:

> That where it shall be made to appear to the satisfaction of the Secretary of the Interior with reference to any lawful pending desert-land entry made prior to July 1, 1922, under which the entryman or his duly qualified assignee

under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land, that there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land in his entry or any legal subdivision thereof, the Secretary of the Interior may, in his discretion, allow such entryman or assignee ninety days from notice within which to pay to the register of the United States Land Office 50 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act, and thereafter within one year from the date of the filing of such election to pay to the register the additional amount of $1.50 an acre, which shall entitled him to a patent for the land: *Provided*, That in case the final payment be not made within the time prescribed the entry shall be canceled and all money theretofore paid shall be forfeited.

This act applies to all pending desert-land entries made prior to July 1, 1922, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

Desert-land entries made prior to March 4, 1915, and pending March 4, 1929, are entitled to the relief granted by the act of March 4, 1915, as amended, or by the provisions of this act. Desert-land entries made since March 4, 1915, and prior to July 1, 1922, and pending March 4, 1929, are entitled only to the relief provided for in this act.

In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the act of March 4, 1915, or under the provisions of said act of March 4, 1929.

In the case of desert-land entries made since March 4, 1915, and prior to July 1, 1922, and pending March 4, 1929, the showing as to the right to such relief must be the same as that required by paragraph 35 of the regulations of May 20, 1924, Circular No. 474 (50 L. D. 443, 466).[e]

Applications for relief hereunder must be filed in the local land office for the district in which the land embraced in the particular entry is situated, and, after examination by the register as to statement of facts required by paragraph 35 of Circular No. 474, supra, and, where necessary, opportunity given applicants to supply data to cure defects, referred to the chief of field division for investigation and report. All reports by the chief of field division upon applications for relief under the provisions of this act should be made directly to the Commissioner of the General Land Office.

When any application for relief under the provisions of this act shall have been approved by the commissioner, notice by registered mail will be served through the proper local land office upon the claimant of such approval; that he will be allowed 90 days from date of receipt of such notice within which to pay to the register 50 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this act; that he will be allowed one year from the date of the filing of such election to pay to the register the additional amount of $1.50 an acre; and that in case the final payment be not made within the time prescribed the entry will be canceled and all money theretofore paid will be forfeited.

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[e] Circular No. 474 of May 20, 1924, was revised Dec. 18, 1928. See par. 35, p. 438.

Should any claimant fail to pay said 50 cents per acre and file said election within the 90-day period, the register will report such facts to the commissioner, whereupon the approved application for relief will be canceled and the case closed without further notice.

To perfect title to the entry the claimant shall file with the register a notice of intention to do so, and the register will order the publication thereof in the same manner as in other desert-land cases and in substantially the following form:

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE AT ——— ———,
——— ———, *19—*.

Notice is hereby given that ——— of ——— who, on ———, 19— made desert-land entry, No. ——— for ——— section ——— township ——— range ——— meridian, has filed notice of his intention to complete the purchase of said land under the provisions of the act of March 4, 1929.

Any and all persons claiming adversely the above-described land or desiring for any reason to object to the completion of the purchase and final entry thereof by the applicant, should file their affidavits of protest in duplicate in this office during the 30-day period of publication immediately following the first printed issue of this notice, otherwise the application may be allowed.

——— ———, *Register*.

Publication, proof thereof, and the required additional payment of $1.50 per acre should be made within one year from the date of the filing of the above-mentioned election, it being expressly stated in said act of March 4, 1929, that said additional payment of $1.50 per acre should be paid within one year from the date of the filing of the election to perfect title to the entry under said act, with the proviso " That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

These acts having been performed, and there being no protest, contest, or other objection, the register will issue the final certificate and transmit it to the General Land Office with the regular returns.

Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may, if they so desire, take advantage of the provisions of this act.

Except as herein set forth, all legislation relating to the relief of desert-land entries and the regulations issued thereunder are in full force and effect.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved April 19, 1929.

JOS. M. DIXON,
First Assistant Secretary.

[illegible] water sufficient to effect reclamation of the irrigable [illegible]

[illegible]

This act applies to all pending desert-land entries made prior to July 1, [illegible] or his duly qualified assignee under an assignment [illegible] of this act has in good faith expended [illegible] in the attempt to effect rec- [illegible] irrigable land [illegible] are entitled only to the relief provided for in [illegible]

[illegible] and reports. All reports by the chief of field division [illegible]

When any application for relief under the pro[illegible] shall have been approved by the commissioner [illegible]istered mail will [illegible] the proper local land office upon the claimant [illegible] that he will be allowed 90 days from date of receipt of such notice within which to pay [illegible] 50 cents [illegible] the land embraced in the entry and to file an election [illegible] entry under the provisions of this act; that he will be allowed one year from the date of the filing of such election to pay to the register the additional amount of $1.50 an

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Circular No. 474 of May 20, 1924, was revised Dec. 12, 1925. See par. 35, p. 432.

EXCHANGES, LIEU SELECTIONS, AND SCRIP

[Reported, 36 L. D. 278]

PUBLICATION AND POSTING OF NOTICE—SCRIP, WARRANT, CERTIFICATE, SOLDIER'S ADDITIONAL AND LIEU LOCATIONS AND SELECTIONS

Department of the Interior,
General Land Office,
Washington, D. C., February 21, 1908.[1]

Registers and Receivers, United States Land Offices.

Gentlemen: In cases of applications to locate all scrips, warrants, certificates, soldier's additional homestead rights, or to make lieu selections of public lands of the United States, the following requirements will govern on and after April 1, 1908:

1. The location or selection must be accompanied, in addition to the evidence required by existing rules and regulations, by affidavit of the locator, selector, or some credible person possessed of the requisite personal knowledge of the premises, showing that the land located or selected is not in any manner occupied adversely to the locator or selector.

2. You will require the locator or selector, within 20 days from the filing of his location or selection, to begin publication of notice thereof, at his own expense, in a newspaper to be designated by the register as of general circulation in the vicinity of the land, and to be the nearest thereto. Such publication must cover a period of 30 days, during which time a similar notice of the location or selection must be posted in the local land office and upon the lands included in the location or selection, and upon each and every non-contiguous tract thereof.[a]

3. The notice must describe the land located or selected, give the date of location or selection, and state that the purpose thereof is to allow all persons claiming the land adversely, or desiring to show it to be mineral in character, an opportunity to file objection to such location or selection with the local officers for the land district in which the land is situate, and to establish their interest therein, or the mineral character thereof.

4. Proof of publication must consist of an affidavit of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the publication notice attached. Proof that the notice remained posted upon the land during the entire period of publication, must be made by the locator or selector or some credible person having personal knowledge of the fact.

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[1] See instructions of Mar. 26, 1908, p. 450, and Oct. 19, 1929, p. 1149.

[a] See instructions of Oct. 19, 1929, p. 1149.

The register will certify to the posting in his office. The first and last days of such publication and posting must in all cases be given.

Very respectfully,

R. A. Ballinger, *Commissioner.*

Approved February 21, 1908.

James Rudolph Garfield, *Secretary.*

[Reported, 36 L. D. 346]

NOTICE OF LOCATION OF WARRANTS, SCRIP, CERTIFICATES, SOLDIERS' ADDITIONAL RIGHTS, ETC.

Department of the Interior,
General Land Office,
Washington, D. C., March 26, 1908.

Registers and Receivers, United States Land Offices.

Gentlemen: Referring to circular of February 21, 1908 (36 L. D. 278), requiring publication and posting of notice in scrip, warrant, certificate, soldiers' additional cases, and lieu locations and selections, you are advised that this office has no printed forms for publication and posting upon the land, but that such notices may be prepared by you, or by the locator or selector and submitted to you for approval, and should be in substance as follows:

NOTICE FOR PUBLICATION

——— ——— Land Office,
——— ———, 190—.

Notice is hereby given that ——— ———, of ———, county of ———, State of ———, has filed in this office his application to (enter, locate or select), under the provisions of the act of Congress, approved ———, ——— (or sec. — R. S.) the ——— of sec. —, T. —, R. —. Any and all persons claiming adversely the lands described, or desiring to object because of the mineral character of the land, or for any other reason, to the disposal to applicant, should file their affidavits of protest in this office, on or before the ——— day of ———, 190—.

——— ———,
Register.

The date last mentioned in the above notice should be not later than 30 days after the beginning of publication and posting.

A similar notice must be posted in your office during the same period and the register's certificate as to posting should be made on Form 4–227, modified so as to show the first and last dates of such posting.

The affidavit of the locator, selector or entryman as to the non-mineral character of the land and that it is not occupied adversely, should be made upon Form 4–061a, modified by striking out reference to the act of June 4, 1897, in other cases than selections under that act.

Very respectfully,

Fred Dennett, *Commissioner.*

[Reported, 38 L. D. 287]

REGULATIONS CONCERNING APPLICATIONS AND SELECTIONS FOR AND FILINGS AND LOCATIONS UPON UNSURVEYED LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 3, 1909.

Registers and Receivers, United States Land Offices.

GENTLEMEN: To remedy the confusion and uncertainty arising from applications and selections for and filings and locations upon unsurveyed public lands, you will hereafter reject any such application, selection, filing, or location, under whatsoever law permitted, unless it conforms to the following rules:

1. It must contain a description of the land by metes and bounds, with courses, distances, and reference to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or object need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, water courses, or other natural objects will not be permitted.

2. The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished; or, if this can not be done, an affidavit must be filed setting forth a valid reason therefor.

3. The address of the claimant must be given, and it shall be the duty of the register and receiver, upon the filing of the township plat in their office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 30 days. In default of action by the party notified the register and receiver will promptly adjust the claim and report their action to the General Land Office.

4. Notice of the application, selection, filing, or location, describing the land as directed in rule 1, must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application, selection, filing, or location, as the case may be.

5. Wherever, under existing regulations, notice of such application, selection, filing, or location is required to be posted elsewhere than upon the land and published in a newspaper, the description of the tract in the posted and published notice must conform to the requirements of rule 1.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved November 3, 1909.

R. A. BALLINGER, *Secretary.*

Circular No. 726

RELATIVE TO THE CERTIFICATION OF ABSTRACTS

Department of the Interior,
General Land Office,
Washington, October 13, 1920.

Registers and Receivers, United States Land Offices.

Sirs: Attention is called to the fact that of late many abstracts have been filed in this office especially in connection with exchanges under the various acts relating to exchange of lands in national forests. These abstracts are certified by an abstract company or by an individual abstracter, neither of whom has complied with that part of section 42 of the mining regulations of August 6, 1915 (44 L. D. 297), which provides that:

> No certificate from an abstracter or abstract company will be accepted until approval by the Commissioner of the General Land Office of a favorable report of the chief of field division or United States district attorney whose division or district embraces the land in question as to reliability and responsibility of such abstracter or company.

These regulations must be compiled with by the company or individual before an abstract certified by them can receive official recognition.

You will be careful to see that hereafter these regulations are complied with, calling the same to the attention of all companies or abstracters having business with your office.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 48 L. D. 595]

Circular No. 817 [2]

ACT OF JANUARY 27, 1922, AMENDING SECTION 2372, REVISED STATUTES, RELATIVE TO CHANGE OF ENTRIES

Department of the Interior,
General Land Office,
Washington, D. C., March 22, 1922.

Registers and Receivers, United States Land Offices.

Sirs: An act approved January 27, 1922 (42 Stat. 359), amended section 2372, Revised Statutes, by adding thereto the following:

> In all cases where a final entry of public lands has been or may be hereafter canceled, and such entry is held by the Land Department or by a court of competent jurisdiction to have been confirmed under the proviso to section 7 of the Act of March 3, 1891 (Twenty-sixth Statutes, page 1099), if the land has been disposed of to or appropriated by a claimant under the homestead or desert-land laws, or patented to a claimant under other public-land laws, the Secretary of the Interior is authorized, in his discretion, and under rules to be prescribed by him, to change the entry and transfer the payment to any other tract of surveyed public land, nonmineral in character, free from lawful claim,

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[2] See Circulars Nos. 967, p. 454, and 1070, p. 455.

and otherwise subject to general disposition: *Provided,* That the entryman, his heirs, or assigns shall file a relinquishment of all right, title, and interest in and to the land originally entered: *Provided further,* That no right or claim under the provisions of this paragraph shall be assignable or transferable.

2. An application for the benefits of this act should describe a specific tract of nonmineral surveyed public land free from lawful claim and subject to general disposition, and should be accompanied by the formal relinquishment by the entryman, his heirs, or assigns of all right, title, and interest in and to the land in the entry on which the right is based, where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained, and must show that the parties applying are the heirs and the only heirs of the deceased entryman. Where applications are made by assignees, the applicants must show their interest in the land under the original entryman by furnishing properly authenticated abstracts of title, and they must show, by affidavits or otherwise, that they have not been indemnified by their grantors for the failure of title. The application should also state whether action has been instituted in the courts to have a subsequent entryman of the land in the former entry declared a trustee, and, if so, the status of the litigation.

3. Credit for payments made in connection with the relinquished entry will be allowed, but a tender of any additional sums due for the land applied for must accompany the application.

4. No rights under the act are assignable or transferable.

5. Applications should be suspended and transmitted to the General Land Office with the current monthly returns, and the applicants should be notified of such suspension. After consideration of the application, it will be submitted to the Secretary of the Interior with appropriate recommendations.

6. Applicants for the benefit of the act will be required to begin, within 30 days after notice of allowance, publication of a notice in a newspaper to be designated by the register as of general circulation in the vicinity of the land, which notice should be substantially as follows:

NOTICE OF CLAIM UNDER SECTION 2372, REVISED STATUTES, AS AMENDED BY THE ACT OF JANUARY 27, 1922

UNITED STATES LAND OFFICE,
——— ———, *19*—.

Notice is hereby given that ——— has filed in this office an application under section 2372, Revised Statutes, as amended by the act of January 27, 1922, for ———, sec. ———. T. ———, R. ———, and that the same has been allowed by the Secretary of the Interior.

All persons claiming the land adversely or desiring to show it to be mineral in character will be allowed until ———, 19—, to file in this office their objections to the issuance of patent under the aforesaid application.

——— ———,
Register.

If the notice is published in a daily paper, the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if weekly, in 5 and if semiweekly, in 9.[a] During the period of publication, the notice as published must be posted in the local land office.

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[a] See Instructions of Oct. 19, 1929, p. 1149.

If no objections appear, the register will, immediately after the date named in the notice, issue final certificate, using Form 4–196 if the former entry was a homestead or Form 4–200 if a desert-land entry, noting thereon references to the act of January 27, 1922, and to the letter allowing the application.

Very respectfully,

William Spry, *Commissioner.*

Approved March 22, 1922.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 684]

Circular No. 967

APPLICATIONS UNDER ACT OF JANUARY 27, 1922 (42 STAT. 359)

Department of the Interior,
General Land Office,
Washington, December 3, 1924.

Registers and Receivers, United States Land Offices.

Gentlemen: Under date of December 2, 1924, the Secretary of the Interior issued the following administrative ruling:

> The act approved January 27, 1922 (42 Stat. 359), provides that in all cases where a final entry of public lands has been or may be hereafter canceled, and such entry is held by the Land Department or by a court of competent jurisdiction to have been confirmed under the proviso to section 7 of the act of March 3, 1891 (26 Stat. 1099), if the land has been disposed of to or appropriated by a claimant under the homestead or desert land laws, or patented to a claimant under other public land laws, the Secretary of the Interior is authorized, in his discretion, and under rules to be prescribed by him, to change the entry and transfer the payment to any other tract of surveyed public land, nonmineral in character, free from lawful claim, and otherwise subject to general disposition, provided that the entryman, his heirs, or assigns shall file a relinquishment of all right, title, and interest in and to the land originally entered. The act contains an inhibition against assigning or transferring any right or claim under the provisions of the act.

The debates in Congress, when the measure was pending, indicate that the object of the act was to afford protection to those persons who had entered the land after the cancellation of an entry as the result of proceedings instituted more than two years after the issuance of the receiver's receipt on final entry. In view of which, and of the discretion vested in the Secretary of the Interior by the act, and considering, also, that beneficiaries have had almost three years within which to present their claims, all applications thereunder filed after the date hereof will be treated as stale claims and rejected unless it appears that the statute of limitations of the State wherein the entered land is situated does not bar an action by the entryman, his heirs, or assigns to have the present holder of the land declared a trustee thereof.

Applications under the act involving two or more incontiguous tracts will not be approved unless none of the tracts is part of an area approximately equal to that embraced in the canceled entry, and subject to entry.

One application under the act, even if for an area less than that to which the claimant is entitled, exhausts his rights under the act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 51 L. D. 463]

CIRCULAR NO. 1070

REPEAL OF THE ACT OF JANUARY 27, 1922, ALLOWING CHANGES OF ENTRY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 8, 1926.

Registers, United States Land Offices.

SIRS: The act of May 21, 1926 (44 Stat. 591), entitled "An act to repeal the act approved January 27, 1922, providing for change of entry, and for other purposes," reads as follows:

> That the Act of Congress approved January 27, 1922, entitled "An act to amend section 2372 of the Revised Statutes," be and the same is hereby repealed: *Provided,* That any applications heretofore filed under the provisions of this Act, or any claim of which notice is filed within sixty days from the approval of this Act, upon which applications are presented within one year from the date of approval of this Act, may be perfected and patents issued therefor the same as if this Act had not been passed: *Provided further,* That when the selection in exchange fails for no fault on the part of the selector another selection in exchange may be made if filed within one year from notice to the selector of the rejection of the selection.

The present law repeals the act of January 27, 1922 (42 Stat. 359), authorizing changes of entry, except as to pending applications, and claims in which notice is filed within 60 days from the approval of the act, followed by selection within one year from the date of approval of the act, and claims where the selection fails for no fault of the selector, in which case a new selection may be made if the same is filed within one year from notice to the selector of the rejection of his selection.

The regulations governing applications under said act of January 27, 1922, are those of March 22, 1922 (48 L. D. 595, Circular No. 817), and your particular attention is called to paragraph 5 thereof, which reads as follows:

> Applications should be suspended and transmitted to the General Land Office with the current monthly returns and the applicants should be notified of such suspension. After consideration of the application, it will be submitted to the Secretary of the Interior with appropriate recommendations.

Said regulations have been added to by the administrative ruling of the Secretary of the Interior on December 2, 1924 (50 L. D. 684, Circular No. 967 of December 3, 1924).

All notices under the act of May 21, 1926, must identify the lands covered by the base entries from which changes of entries are contemplated by describing the lands by subdivision, section, township, and range, or by giving the number, date, and kind of entry and the land office where each entry was made. They may be filed direct in the General Land Office. Unless accompanied by applications for changes of entry to particular tracts of land, you should not assign serial numbers to the notices, but should stamp the date received thereon and promptly forward them to this office.

Very respectfully,

William Spry, *Commissioner.*

Approved June 8, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 43 L. D. 565]

Circular No. 386

REGULATIONS UNDER THE ACT OF APRIL 21, 1904 (33 STAT. 211), PROVIDING FOR THE EXCHANGE OF PRIVATE LANDS SITUATED WITHIN INDIAN RESERVATIONS

Department of the Interior,
General Land Office,
Washington, D. C., February 27, 1915.

Registers and Receivers, United States Land Offices.

Gentlemen: The act of April 21, 1904 (33 Stat. 211), making appropriations for the current and contingent expenses of the Indian Office and for fulfilling treaty stipulations with the various Indian tribes for the fiscal year ending June 30, 1905, provides, inter alia—

> That any private land over which an Indian reservation has been extended by Executive order may be exchanged, at the discretion of the Secretary of the Interior and at the expense of the owner thereof and under such rules and regulations as may be prescribed by the Secretary of the Interior, for vacant nonmineral, nontimbered, surveyed public lands of equal area and value and situate in the same State or Territory.

Preliminary to making relinquishment and selection of other lands under the provisions of the foregoing act, the owner of any private land over which an Indian reservation has been extended by Executive order must file with the Commissioner of the General Land Office an application addressed to the Secretary of the Interior requesting that he be permitted to surrender the lands by him owned and to select other lands in lieu thereof, pursuant to the provisions of the act of April 21, 1904 (33 Stat. 211), conformable to the rules and regulations adopted by the Secretary of the Interior and subject to the exercise of the Secretary's discretion. The land proposed to be surrendered must be accurately described by legal subdivisions if surveyed, or in the event that it is unsurveyed by such designation as will readily enable the Commissioner of the General Land Office to identify it. There may accompany such applications a brief, or argument, setting forth such reasons as the petitioner may see proper to offer why the application to accept such land as a basis of selection under the aforesaid act should be entertained by the Secretary of the Interior. This petition, with report thereon, will be submitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for report as to whether the lands are needed for the use of the Indians, and for such other recommendations as the Commissioner of Indian Affairs may deem proper, and thereafter the applications, with all papers, and recommendation of the Commissioner of Indian Affairs and of the General Land Office will be submitted to the department for consideration and action. If the Secretary is of opinion, after considering the application, that it is inadvisable for the Government to acquire the title to the land described therein, under the provisions of the aforesaid act, he will deny the application.

If, however, the Secretary decides to entertain the proposition, subject to the further exercise of his discretion, he will so order, and thereafter selections may be made by the petitioner, or applicant, under the rules, regulations, restrictions, limitations, and conditions herein following:

PRIVATE LANDS SUBJECT TO EXCHANGE

1. Private lands subject to exchange under the provisions of this act include all lands within the limits of an Indian reservation established by Executive order to which the right to a patent or its equivalent has been earned by full compliance with the laws of the United States governing the disposal of said lands.

RELINQUISHMENT OR RECONVEYANCE

2. Relinquishment or reconveyance made in pursuance of this act must be executed and acknowledged in the same maner as conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. Where the relinquishment or reconveyance is made by an individual it must show whether the person relinquishing is married or single; and if married, the wife or husband of such person, as the case may be, must join in the execution of the relinquishment or reconveyance in such maner as to effectually bar any right or estate of dower, courtesy, or homestead, or any other claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State in which the relinquished land is situated such wife or husband has no interest whatever, present or prospective, which makes her or his joinder in the relinquishment or reconveyance necessary. Where the relinquishment or reconveyance is by a corporation it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer, which must follow in the matter of its execution strictly the laws of the State in which the land is situated relating to corporate conveyances, and should bear the impress of the corporate seal.

ABSTRACTS OF TITLE

3. Each relinquishment or reconveyance must be accompanied by a duly authenticated abstract of title showing that at the time the re-

linquishment or reconveyance was executed the title was in the party making the same, and that the land was free from conflicting record claims, tax liability, judgment or mortgage liens, pending suits, or other incumbrances.

AUTHENTICATION OF ABSTRACT

4. The certificate of authentication of the abstract must be signed by the recorder of deeds under his official seal and must show that the title memoranda is a full, true, and complete abstract of all matters of record or on file in his office, including all conveyances, mortgages, or other incumbrances, judgments against the various grantors, mechanics or other liens, lis pendens, and all other instruments which are required by law to be filed with the recording officer, affecting in any manner whatsoever the title to the described land. The custodian of the tax records must certify that all taxes levied or assessed against the land or that could operate as a lien thereon have been fully paid and that there are no unredeemed tax sales and no tax deeds outstanding, as shown by the records of his office. The absence of judgment liens or pending suits against the various grantors which might affect the title of the land relinquished or reconveyed must be shown by the official certificates of the clerks of all courts of record whose judgments under the laws of the United States, or the State in which the land is situated, would be a lien on the land reconveyed or relinquished, without being transcribed other than on the court records.

LANDS SUBJECT TO SELECTION

5. Selections under the provisions of this act are restricted to surveyed nonmineral, nontimbered, vacant unreserved public lands situated in the same State as, and equal in area and value to, the lands relinquished.

SELECTIONS

6. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney-in-fact; and when made by an agent or attorney-in-fact proof of authority must be furnished.

APPLICATIONS TO SELECT

7. Applications to select hereunder must be filed in the proper local land office and must specifically describe the land desired to be surrendered and that sought to be selected. If more than minimum is selected, as provided for in paragraph 14, corresponding base for each tract must be shown. The county and State, as well as the Indian reservation, and the land district wherein situated must be given of the land relinquished. It must, in each instance, be shown that the applicant is the owner of the land relinquished and that he desires to surrender the same to the Government and select in lieu thereof public lands under the provisions of the act of April 21, 1904 (33 Stat. 211); that the land surrendered and that selected therein described are of equal area and value; that the land selected is nonmineral, nontimbered, vacant, and unoccupied public land; that the applicant will, without cost to the Government, place the deed of relinquish-

ment of record and extend the abstract of title to the date of the recordation thereof upon being notified so to do by the land department; and that upon the request of the Secretary of the Interior he will deposit with him a reasonable amount of money to enable the Secretary to investigate and determine the legality of the selection.

8. The application must be accompanied by a deed or relinquishment or reconveyance to the land tendered as the basis of exchange, duly executed, and a properly authenticated abstract of title to the land, by the required commissions, and proof that the relinquished land and that selected are equal in area and value; that the selected land is nonmineral, nontimbered, vacant, and unoccupied adversely to the selector therein; that the land relinquished and offered in exchange is not the basis of another selection, and satisfactory evidence that the Secretary has, subject to the further exercise of his discretion, entertained the selector's preliminary application to reconvey the basis land and select other lands in lieu thereof.

9. The affidavit or affidavits to support a selection under this act must be made by the selector or by some credible person possessed of the requisite personal knowledge in the premises, and may be executed before any officer qualified to administer oaths, and must be corroborated by at least one person who has no personal interest in the exchange and who is familiar with the character and condition and value of the land selected and the value of the land relinquished. This affidavit or affidavits, duly corroborated, must show that the land selected is nonmineral and nontimbered in character; that it contains no salt springs or deposit of salt in any form sufficient to render it chiefly valuable therefor; that it is not in any manner occupied adversely to the selector; and that the lands selected and the lands relinquished are equal in area and value, and are situated in the same State.

10. Forms of application for selection under this act and accompanying affidavits as to relinquished and selected land, as set out hereinafter in these instructions, or their equivalents, should be used. All proofs and papers necessary to complete a selection must be filed at one and the same time, except as herein otherwise specially provided.

PUBLICATIONS

11. In all cases you will require the applicant, within 20 days from the filing of his application, to begin publication of notice thereof at his own expense in a newspaper to be designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of 30 days, during which time a similar notice of the application must be posted in the local land office and upon each and every noncontiguous tract included in the application.[b]

12. The notice should describe the land applied for and give the date of application, and state that the purpose thereof is to allow all persons claiming the land under the mining or other laws, desiring to show it to be mineral in character or adversely occupied, an opportunity to file objection to such application with the local officers of

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[b] See instructions of Oct. 19, 1929, p. 1149.

the land district in which the land is situated and to establish their interest therein or the mineral character thereof.

13. Proof of publication shall consist of an affidavit of the publisher, or of the foreman or other proper employee, of the newspaper in which the notice was published, with a copy of the published notice attached. Proof of posting upon the land, and that such notice remained posted during the entire period required, shall be made by the applicant or some credible person having personal knowledge of the fact. The register shall certify to posting in his office. The first and last dates of such publication and posting shall, in all cases, be given.

14. Owners of lands over which an Indian reservation has been extended by Executive order will not be permitted to make selection, or selections, which isolate intervening tracts of less than 160 acres, nor to make selection for noncontiguous tracts of less than 160 acres unless all the adjoining lands has been disposed of or are not subject to selection. Any attempt on the part of the owner of land within a reservation to avoid this rule by making surrender to the Government by separate deeds or by a sale of part of the land to another person after the approval of these regulations will defeat the proposed transfer.

15. Fees must be paid by the applicant at the time of filing his application in the local land office at the rate of $1 each to the register and receiver for each 160 acres or fraction thereof included in his application.

16. Selections made under this act will not be passed to patent until after four months following the filing of the application in the local office. This is to enable any person claiming an adverse right to the selected land to have full opportunity to regularly assert said right.

17. The land relinquished and the land selected must be, as nearly as practicable, equal in area, but the rules of approximation obtaining in other classes of entries will be observed.

18. Applications to select under the provisions of this act will not defeat the right of the Secretary of the Interior or of the President of the United States to withdraw or reserve the land for such proposed public purposes or uses as they may deem proper prior to the approval of the selection by the Secretary of the Interior, and the Secretary, acting within the exercise of his discretion, may reject any and all applications at any time prior to final approval of the same for any reason appearing to him good and sufficient, notwithstanding the application may have been received and certified by the local office and recommended for approval by the Commissioner of the General Land Office.

PRACTICE

19. Notices of additional or further requirements, rejections, or other adverse actions of registers and receivers, the commissioner, or the Secretary will be given, and the rights of appeal, review, or rehearing recognized in the manner now prescribed by the rules of practice, except as herein otherwise provided.

20. If application to contest or a protest or other objection shall at any time be filed against the selection or the application to select, you will forward the same to this office for its consideration and disposition.

21. Applications to enter filed subsequent to and in conflict with applications to select under this act will be rejected, except where such subsequent application to enter is supported by allegations of prior right, in which event you will transmit the conflicting application to enter to this office, with appropriate recommendation.

22. Applications presented to your office under the provisions of the foregoing act, not in substantial compliance with the requirements herein made, or not accompanied by the prescribed proofs, or if the land offered as a basis of exchange is not situated within the boundaries of an Indian reservation created by Executive order, will be rejected by you. All applications sufficient in form, accompanied by the required proofs, will be accepted for transmission as hereinbefore provided and you will note on your records against the land: "Application of ———, act April 21, 1904, pending." The register will certify the condition of your records on the applications, and you will transmit the papers to this office promptly after the filing of the proofs of publication in your office.

23. The commissioner will, upon the receipt of an application to select under the provisions of this act in the General Land Office, cause field examination to be made of both the selected and base land without expense to the Government, after which, if, in his judgment, the rules and regulations have been complied with, he will transmit the records to the Secretary with his report and recommendation. If, however, the commissioner finds that the selection is defective or that the rules and regulations have not been complied with, he will reject the selection or require further proofs.

24. If upon examination of an application to select under this act the Secretary decides that it should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the State where the land is situated, and to have the abstract of title extended down to and including the date the deed of relinquishment or conveyance was recorded.

25. If the Secretary be of opinion that further evidence as to value and character of the land involved is necessary, he may institute such an inquiry as he may deem advisable, and may require the applicant to deposit a sum of money to defray the expense of the investigation. In any case where deposit shall be required to defray the expense of an investigation it will be made with the Secretary of the Interior, to be held and disbursed by him or under his directions.

26. If the Secretary approve the proposed exchange, the Commissioner of the General Land Office will, as soon as practicable, after the receipt of the advice of such approval, make suitable notations on the records of his office and notify the local office wherein the selected land is subject to disposal thereof. The commissioner in his letter to the local officer will require that the applicant be notified of the approval of his application, and informed that he will be allowed 30 days in which to place the deed of reconveyance or relinquishment of record and to extend the abstract of title down to and including the date of the recordation of such deed, and that he be further advised that in default of action within the time specified the application will be finally rejected without further notice.

27. Approval by the Secretary of the Interior will be subject to and conditioned upon the bona fide compliance on the part of the appli-

cant with all the regulations and requirements herein or which may, by direction of the Secretary of the Interior, be hereafter promulgated.

THE SECRETARY'S DISCRETION

28. The Secretary of the Interior may, in the exercise of the discretion in him vested by law, withhold his approval from any application made under the provisions of this act, although the applicant may have complied with the rules and regulations herein prescribed. Owners of land situated within the boundaries of Indian reserves, created by Executive order, are hereby specifically informed that if, in the opinion of the Secretary, the approval of any application, made under the provisions of this act, would be inimical to the public interests, such application will be rejected.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved February 27, 1915.

Andrieus A. Jones,
First Assistant Secretary.

(Forms omitted.)

[Reported, 51 L. D. 152]

Circular No. 1012

REGULATIONS FOR EXCHANGE OF LANDS IN THE ADDITIONS TO THE NAVAJO INDIAN RESERVATION, ARIZ.

Department of the Interior,
General Land Office,
Washington, May 27, 1925.

Register and Receiver, *Phoenix, Ariz.*
Superintendent Leupp Agency, *Leupp, Ariz.*
Superintendent Western Navajo Agency, *Tuba City, Ariz.*

Gentlemen: The following regulations are issued for your guidance under the act of March 3, 1925 (43 Stat. 1115), authorizing reconveyances and relinquishments of lands, and lieu selections therefor, within the additions to the Navajo Indian Reservation in Arizona, by Executive orders of January 8, 1900, and November 14, 1901. The act reads as follows:

> That the Secretary of the Interior is hereby authorized, in his discretion, under rules and regulations to be prescribed by him, to accept reconveyances to the Government of privately owned and State school lands, and relinquishments of any valid filings under the homestead laws, or of other valid claims within the additions to the Navajo Indian Reservation, Arizona, by executive orders of January 8, 1900, and November 14, 1901, and to permit lieu selections within the boundaries of the said reservation additions by those surrendering their rights, so that the lands retained for Indian purposes may be consolidated and held in a solid area so far as may be possible: *Provided,* That the title or claim of any person or company who refuses to reconvey to the Government shall not be hereby affected.

As the "exchanges" permitted under the act for the purpose of consolidations can be made only with the mutual consent of all persons interested, and be brought to the point where approvals may be had of the Secretary of the Interior, there should be full preliminary cooperation as a preventive of adverse action and as a means of aiding prompt and favorable action by the Government. It would, therefore, be appropriate that you suggest to all prospective applicants that before any applications are actually filed in the local land office they go over the matter, as between themselves, with the view of arriving at some tentative agreement as to what lands they wish to relinquish and to determine the exact status of the land desired in exchange.

A person or corporation, or the State of Arizona, desiring to reconvey and select lieu lands should file in duplicate an application with the local land officers at Phoenix definitely describing by Government surveys the lands wanted and the lands offered in exchange; and notice of such application must be given in compliance with the circular of February 21, 1908 (36 L. D. 278), with the exception, that instead of beginning publication within 20 days of filing of selection, the selector will begin such publication within 30 days from date of service of notice by the register and receiver that the application has been placed of record.[c]

In all cases where the application involves land occupied, claimed, or owned by an Indian, the register and receiver will forward a copy of the application to the proper Indian superintendent; and in all such cases will furnish the superintendent with the serial number of the application, which serial number, together with the name of the land office, must be indorsed thereon as a means of identification and referred to in all correspondence concerning said application. It will be the duty of these officials to examine the land proposed to be relinquished or reconveyed by all Indian applicants, and the land proposed to be acquired by Indian applicants, and to submit reports of such examinations involving lands in their respective jurisdictions to the Commissioner of Indian Affairs, with appropriate recommendation as to the allowance or disallowance of the application, a copy of which report must be forwarded to register and receiver at Phoenix.

The register and receiver will forward to the Commissioner of the General Land Office with their monthly returns all applications filed in their office for exchanges under the said act of March 3, 1925, supra, after noting the same on their records in the usual manner.

The inspection service of the department will cause to be made such investigations and examinations of the lands and claims described and set forth in applications for exchange as will enable the Secretary of the Interior properly to act in the premises. Applicants should specifically state in their applications that the same are made pursuant to the authority contained in the said act of March 3, 1925, and these instructions.

An affidavit showing that the land asked for in exchange is not adversely claimed should accompany each application, and in cases where the land is covered by an allotment, homestead, or desert entry, proper relinquishments should be filed. Where applications are submitted involving the reconveyance or relinquishment of lands selected by or patented to individual Indians, such applications may be considered jointly and not necessarily as separate applications; provided, in such cases, the lands to be acquired in exchange will consolidate the holdings of such Indians.

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[c] See instructions of Oct. 19, 1929, p. 1149.

There should also accompany the application a warranty deed duly executed according to the laws of Arizona by the proponent conveying to the United States the land to be given in exchange, but such deed need not be recorded. An abstract of title brought down to show good title in the proponent, free from all encumbrances, must also be filed. Such abstract of title must be authenticated by the proper State and Federal officers and show that the land is free from all judgment claims, or liens, including taxes, or such abstract may be authenticated by an abstractor or abstract company as provided by General Land Office Circular No. 726. If the exchange is authorized, the deed will be returned for recording and the abstract to be brought down to show such recordation, whereupon patent will be issued in the regular order of business.

Where the land relinquished is covered by an unperfected bona fide claim for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way to encumber the title to the land or any part thereof is on file or of record in his office; or if any such instrument or instruments be on file or of record therein, the certificate must show the facts. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held, and will be subject to the payment of such fees and commissions as would be required under the statutes to complete the unperfected claim in lieu of which the selection is made.

If the land relinquished is covered by an Indian allotment for which a trust patent has been issued, that trust patent should accompany the application for exchange and on the reverse side of the patent should be indorsed and relinquishment of the patentee witnessed by two persons or before a notary public or other official with a seal. If the trust patent has been lost or destroyed or for any reason can not be located, the relinquishment and application for exchange may be combined, including a sworn statement as to the loss of the patent, or reason given why it can not be furnished. In cases of this character no deed will be necessary, but the selector must make affidavit that he had not sold, assigned, mortgaged, or contracted to sell, assign, or mortgage the land covered by the unperfected claim or relinquished allotment.

The law makes no provision for reimbursing any persons for improvements on land relinquished or reconveyed. However, when any applicant receives notice that an exchange applied for has been authorized, he may, if he so desires, remove any buildings, fencing, or other movable improvements owned or erected by him on the land relinquished or conveyed, provided that such removal is accomplished within 90 days from receipt by him of said notice.

Respectfully,

William Spry,
Commissioner of the General Land Office
Chas. H. Burke,
Commissioner of Indian Affairs.

Approved May 27, 1925.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 192]

CIRCULAR NO. 1029

REGULATIONS FOR EXCHANGE OF LANDS IN THE WALAPAI INDIAN RESERVATION, ARIZ.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 8, 1925.

REGISTER,
Phoenix, Ariz.
SUPERINTENDENT TRUXTON CANYON AGENCY,
Valentine, Ariz.

GENTLEMEN: The following regulations are issued for your guidance under the act of February 20, 1925 (43 Stat. 954), authorizing reconveyances and relinquishments of lands, and lieu selections therefor, within the Walapai Indian Reservation in Arizona. The act reads as follows:

> That the Secretary of the Interior is hereby authorized, in his discretion, under rules and regulations to be prescribed by him, to accept reconveyances to the Government of privately owned and State school lands and relinquishments of any valid filings, under the homestead laws, or of other valid claims within the Walapai Indian Reservation in Mohave and Coconino Counties, Arizona, and to permit lieu selections within the boundaries of the said reservation by those surrendering their rights so that the lands retained for Indian purposes may be consolidated and held in a solid area so far as may be possible: *Provided,* That the title or claim of any person or company who refuses to reconvey to the Government shall not be hereby affected.

As the "exchanges" permitted under the act for the purpose of consolidations can be made only with the mutual consent of all persons interested, and be brought to the point where approvals may be had of the Secretary of the Interior, there should be full preliminary cooperation as a preventive of adverse action and as a means of aiding prompt and favorable action by the Government. It would, therefore, be appropriate that you suggest to all prospective applicants that before any applications are actually filed in the local land office, they go over the matter, as between themselves, with the view of arriving at some tentative agreement as to what lands they wish to relinquish and to determine the exact status of the land desired in exchange.

A person or corporation, or the State of Arizona, desiring to reconvey and select lieu lands should file in duplicate an application with the local land officer at Phoenix definitely describing by Government surveys the lands wanted and the lands offered in exchange; and notice of such application must be given in compliance with the circular of February 21, 1908 (36 L. D. 278), with the exception, that instead of beginning publication within 20 days of filing of selection, the selector will begin such publication within 30 days from date of service of notice by the register that the application has been placed of record.

In all cases where the application involves land occupied, claimed, or owned by an Indian, or where the land is occupied, claimed, or held by the Indians as a tribe, the register will forward a copy of the application to the Indian superintendent; and in all such cases will furnish the superintendent with the serial number of the application, which serial number together with the name of the land office must be indorsed thereon as a means of identification and referred to in all correspondence concerning said application. It will be the duty of this official to examine the land proposed to be relinquished or reconveyed by the Indian applicant or on behalf of the tribe and the land proposed to be acquired by or for the Indians, and to submit reports of such examinations to the Commissioner of Indian Affairs with appropriate recommendation as to the allowance or disallowance of the application, a copy of which report must be forwarded to the register at Phoenix.

The register will forward to the Commissioner of the General Land Office, with his monthly returns, all applications filed in his office for exchanges under the said act of February 20, 1925, supra, after noting the same on his records in the usual manner.

The inspection service of the department will cause to be made such investigations and examinations of the lands and claims described and set forth in applications for exchange as will enable the Secretary of the Interior properly to act in the premises.

Applicants should specifically state in their applications that the same are made pursuant to the authority contained in the said act of February 20, 1925, and these instructions. An affidavit showing that the land asked for in exchange is not adversely claimed should accompany each application, and in cases where the land is covered by homestead or desert entry or application, proper relinquishments should be filed.

There should also accompany the application a warranty deed duly executed according to the laws of Arizona by the proponent conveying to the United States the land to be given in exchange, but such deed need not be recorded. An abstract of title brought down to show good title in the proponent, free from all encumbrances, must also be filed. Such abstract of title must be authenticated by the proper State and Federal officers and show that the land is free from all judgment claims, or liens, including taxes, or such abstract may be authenticated by an abstractor or abstract company as provided by General Land Office Circular No. 726. If the exchange is authorized the deed will be returned for recording and the abstract to be brought down to show such recordation, whereupon patent will be issued in the regular order of business.

Where the land relinquished is covered by an unperfected bona fide claim for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way to encumber the title to the land or any part thereof is on file or of record in his office; or if any such instrument or instruments be on file or of record therein, the certificate must show the facts. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held, and will be subject to the payment of such fees and commissions as would be required under the statutes to complete the unperfected claim in lieu of which the selection is made.

The law makes no provision for reimbursing any persons for improvements on land relinquished or reconveyed. However, when any applicant receives notice that an exchange applied for has been authorized, he may, if he so desires, remove any buildings, fencing, or other movable improvements owned or erected by him on the land relinquished or conveyed; provided, that such removal is accomplished within 90 days from receipt by him of said notice.

Respectfully,

THOS. C. HAVELL,
Acting Commissioner of the General Land Office.
CHAS. H. BURKE,
Commissioner of Indian Affairs.

Approved:

JOHN H. EDWARDS,
Assistant Secretary.

[Reported, 49 L. D. 281]

CIRCULAR NO. 850

REGULATIONS FOR EXCHANGE OF LANDS IN SAN JUAN, McKINLEY, AND VALENCIA COUNTIES, N. MEX.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 19, 1922.

REGISTER AND RECEIVER, *Santa Fe, N. Mex.*,
SUPERINTENDENT AT PUEBLO BONITO AGENCY, *Crown Point, N. Mex.*,
SUPERINTENDENT AT ZUNI SCHOOL, *Blackrock, N. Mex.*

GENTLEMEN: The following regulations are issued for your guidance under the act of March 3, 1921 (41 Stat. L. 1225–1239), authorizing reconveyances and relinquishments of lands, and lieu selections therefor, in San Juan, McKinley, and Valencia Counties.

The act mentioned contains this provision:

> The Secretary of the Interior is hereby authorized in his discretion, under rules and regulations to be prescribed by him, to accept reconveyances to the Government of privately owned and State school lands, and relinquishments of valid homestead entries or other filings, including Indian allotment selections, within any township of the public domain in San Juan, McKinley, and Valencia Counties, New Mexico, and to permit lieu selections by those surrendering their rights so that the holdings of any claimant within any township wherein such reconveyances or relinquishments are made may be consolidated and held in solid areas: *Provided*, That the title or claim of any person who refuses to reconvey to the Government shall not be hereby affected.

As the "exchanges" permitted under the act for the purpose of consolidations can be made only with the mutual consent of all persons interested, and be brought to the point where approvals may be had of the Secretary of the Interior, there should be full preliminary cooperation as a preventive of adverse action and as a means of aiding prompt and favorable action by the Government. It would, therefore, be appropriate that you suggest to all prospective applicants that before any applications are actually filed in the local land office, they go over the matter, as between themselves, with the view of arriving at some tentative agreement as to what lands they wish to relinquish and take in exchange.

The question of whether the lands wanted by each interest is vacant public domain or railroad land, whether it is State land or Indian allotments patented or selected therefor, or whether leased, etc., should first be ascertained by such persons as nearly as may be possible; also, some understanding should be had between all the interests indicating their attitude. There are many small details connected with propositions of this character which must necessarily be worked out first by the applicants themselves, and that can be done promptly and satisfactorily by personal conferences among themselves, rather than to have applications filed indiscriminately with the expectation that the field force of this department will attempt to reconcile all the differences that will no doubt be found to exist.

A person or corporation, or the State of New Mexico, desiring to reconvey and select lieu lands should file in duplicate an application with the local land officers at Santa Fe definitely describing by Government surveys the lands wanted and the lands offered in exchange; and notice of such application must be given in compliance with the circular of February 21, 1908 (36 L. D. 278), with the exception, that instead of beginning publication within 20 days of filing of selection, the selector will begin such publication within 30 days from date of service of notice by the register and receiver that the application has been placed of record.

In all cases where the application involves land occupied, claimed, or owned by an Indian, the register and receiver will forward a copy of the application to the proper Indian superintendent; and in all such cases will furnish the superintendent with the serial number of the application, which serial number together with the name of the land office must be indorsed thereon as a means of identification and referred to in all correspondence concerning said application. Copies of applications covering lands occupied, claimed, or owned by Indians in San Juan and McKinley Counties will be filed with the Indian superintendent at Crown Point; and copies of applications covering such lands in Valencia County will be filed with the superintendent at Blackrock. It will be the duty of these officials to examine the land proposed to be relinquished or reconveyed by all Indian applicants, and the land proposed to be acquired by Indian applicants, and to submit reports of such examinations involving lands in their respective jurisdictions, to the Commissioner of Indian Affairs with appropriate recommendation as to the allowance or disallowance of the application, a copy of which report must be forwarded to the register and receiver at Santa Fe.

The register and receiver will forward to the Commissioner of the General Land Office with their monthly returns all applications filed in their office for exchanges under the said act of March 3, 1921, supra, after noting the same on their records in the usual manner. The application will be noted " suspended " by the register and receiver, and unless disallowed by the Secretary of the Interior, the lands applied for in exchange will not be subject to application or filing by any other applicant.

The Commissioner of the General Land Office, acting through the field service thereof, will cause to be made such investigations and examinations of the lands and claims described and set forth in applications for exchange as will enable the Secretary of the Interior properly to act in the premises. Applicants should specifically state in their applications that the same are made pursuant to the authority contained in the said act of March 3, 1921, and these instructions.

An affidavit showing that the land asked for in exchange is nonmineral in character and not adversely claimed should accompany each application; except that in cases where the land is covered by an allotment, homestead, or desert entry, a statement may be incorporated in the affidavit to the effect that the claimant to such land has filed an application to relinquish or reconvey the land to the United States under the provisions of the act of March 3, 1921, supra, if such be the fact. Where applications are submitted involving the reconveyance or relinquishment of lands selected by or patented to individual Indians, such applications may be considered jointly and not necessarily as separate applications; provided, in such cases, the lands to be acquired in exchange will consolidate the holdings of such Indians.

The lands selected must, in conjunction with other property owned by the party conveying, be in a compact body, as near as may be possible, regardless of township lines; but no application will be considered involving lieu lands in any township wherein the selector owns no land, and where the approval of such application will not affect a consolidation of the holdings of the applicant in such township or townships. Nonmineral, surveyed, unappropriated, and unreserved land, except as provided by the preceding paragraph, can be selected.

There should also accompany the application a warranty deed duly executed according to the laws of New Mexico by the proponent conveying to the United States the land to be given in exchange, but such deed need not be recorded. An abstract of title brought down to show good title in the proponent, free from all encumbrances, must also be filed. Such abstract of title must be authenticated by the proper State and Federal officers and show that the land is free from all judgment, claims, or liens, including taxes, or such abstract may be authenticated by an abstractor or abstract company as provided by General Land Office Circular No. 726 of October 13, 1920. If the exchange is authorized the deed will be returned for recording and the abstract to be brought down to show such recordation, whereupon patent will be issued in the regular order of business.

Where the land relinquished is covered by an unperfected bona fide claim for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way to encumber the title to the land or any part thereof is on file or of record in his office; or if any such instrument or instruments be on file or of record therein, the certificate must show the facts. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held, and will be subject to the payment of such fees and commissions as would be required under the statutes to complete the unperfected claim in lieu of which the selection is made.

If the land relinquished is covered by an unperfected claim—such as a homestead or desert entry—for which certificate for patent has not been issued and the law under which the claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection irrespective of lands otherwise owned or claimed. If the land relinquished is covered by an Indian allotment for which a trust patent has been issued, that trust patent should accompany the application for exchange and on the reverse side of the patent should be indorsed the relinquishment of the patentee witnessed by two persons or before a notary public or other official with a seal. If the trust patent has been lost or destroyed or for any reason can not be located, the relinquishment and application for exchange may be combined, including a sworn statement as to the loss of the patent, or reason given why it can not be furnished. In cases of this character no deed will be necessary, but the selector must make affidavit that he has not sold, assigned, mortgaged, or contracted to sell, assign, or mortgage the land covered by the unperfected claim or relinquished allotment.

A selection of land in lieu of an unperfected entry under the settlement laws if credit for residence on the unperfected claim be desired, must in addition to other proofs be accompanied by the affidavit of the selector, corroborated by two witnesses, showing when residence was established on the unperfected claim and the duration of such residence. In such a case, unless the selector has resided upon, cultivated, and improved the relinquished unperfected claim for the full period required by law to earn a patent thereto, he must establish and maintain a residence on the land selected and cultivate and improve the same for the full period required by law to earn a patent, less the time spent upon the relinquished unperfected claim.

If the relinquished unperfected claim be not one held under the settlement laws, the affidavit as to the residence required by the preceding paragraph need not be furnished; but in either case the selector must make affidavit that he has not sold, assigned, mortgaged, or contracted to sell the land covered by the relinquished unperfected claim. No patent shall be issued for any lieu land selection until all parties in interest and involved in the exchange of their holdings with each other and with the Government shall have completed their selections and thereby and otherwise in accordance with applicable law and the regulations thereunder earned equitable title to the land involved therein.

The law makes no provision for reimbursing any persons for improvements on land relinquished or reconveyed. However, when any applicant receives notice that an exchange applied for has been authorized, he may, if he so desires, remove any buildings, fencing, or other movable improvements owned or erected by him on the land relinquished or conveyed: *Provided*, That such removal is accomplished within 90 days from receipt by him of said notice. Any land relinquished to the United States under these regulations, which tracts would ordinarily become subject to entry under the public land laws, shall be withheld from all forms of disposal until further specific action is taken thereon to make the said lands subject to settlement or entry, or to any form of disposal; and until otherwise directed the local land officers will not allow any entry or application for such lands.

Respectfully,

William Spry,
Commissioner of the General Land Office.
Chas. H. Burke,
Commissioner of Indian Affairs.

Approved Sept. 19, 1922.

E. C. Finney,
First Assistant Secretary.

Circular No. 867

EXCHANGE OF LANDS IN CERTAIN NATIONAL FORESTS, WASHINGTON

Department of the Interior,
General Land Office,
Washington, January 9, 1923.

Registers and Receivers, Seattle, Waterville, Yakima, Wash.

Gentlemen: Your attention is called to the act of September 22, 1922 (42 Stat. 1036), entitled: "An act for the inclusion of certain lands in the Wenatchee National Forest, the Olympic National Forest, and the Snoqualmie National Forest, all in the State of Washington, and for other purposes."

Said act reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the following-described areas any lands not in Government ownership which are found by the Secretary of Agriculture to be chiefly valuable for national forest purposes may be offered in exchange under the provisions of the Act of March 20, 1922 (Public 173), upon notice as therein provided and upon acceptance of title shall become parts of the Wenatchee National Forest, the Olympic National Forest, and the Snoqualmie National Forest, respectively, and any of such described areas in Government ownership chiefly valuable for national forest purposes and not now parts of any national forest may be added to said national forests as herein provided by proclamation of the President, subject to all valid existing entries: To the Wenatchee National Forest, township twenty north, range thirteen east, west half of township and sections one, three, ten, south half of fourteen, fifteen, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, thirty-four, thirty-five, and thirty-six; township twenty north, range fourteen east, sections one, three, four, five, six, seven, eight, nine, ten, fifteen, sixteen, south half of section twenty-nine, south half of section thirty, sections thirty-one, thirty-two, and thirty-three; township twenty north, range fifteen east; sections two, three, four, five, six, eight, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen; township twenty-one north, range fifteen east; sections twelve, thirteen, fourteen, fifteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, north half of twenty-six, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, and thirty-four; township twenty north, range sixteen east, sections one, two, three, seven, south half of section eight, north half of sections eleven, twelve, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, north half of section twenty-two; township twenty-one north, range sixteen east, sections four, seven, nine, ten, fifteen, eighteen, nineteen, east half of section twenty-one, twenty-two, twenty-seven, east half of section twenty-eight, thirty, east half of section thirty-three, and thirty-four; township twenty north, range seventeen east, sections four, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen, north half of section eighteen, twenty-five, twenty-six, thirty-five, and thirty-six; township twenty-three north, range eighteen east; sections three, four, five, six, seven, eight, nine, seventeen, eighteen, twenty, twenty-three, twenty-four, twenty-five, twenty-six, thirty-five, and thirty-six; township twenty-four north, range eighteen east; sections thirty, thirty-one, thirty-three, and south half of section thirty-four; township twenty north, range nineteen east; township twenty-two north, range nineteen east; sections two, three, four, five, six, seven, eight, nine, ten, eleven, fourteen, fifteen, sixteen, seventeen, eighteen, and south half of township; township twenty-three north, range nineteen east; sections nineteen, thirty, thirty-one, thirty-two, thirty-three, thirty-four, and thirty-five; township twenty-five north, range nineteen east; township twenty-six north, range nineteen east; township twenty-seven north, range nineteen east; township twenty north, range twenty east; township twenty-one north, range twenty east, sections six, seven, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, and thirty-six; township twenty-five north, range twenty east; sections five, six, seven, eight, sixteen, seventeen, eighteen, nineteen, twenty, and twenty-one; township twenty-six north, range twenty east; sections one to sixteen, inclusive, twenty-one to twenty-seven, inclusive, thirty, thirty-one, thirty-two, thirty-five, and thirty-six; township twenty-seven north, range twenty east; all Willamette principal meridian;

To the Olympic National Forest, all of section one, township twenty-four north, range three west, except lot one; the southeast quarter of the northeast quarter, the northeast quarter of the southeast quarter, the southwest quarter of the southwest quarter, and lot one, section six, township twenty-four north, range two west, and a permanent right of way for a logging road twenty-five feet wide across lot one, section one, in township twenty-four north, range three west;

To the Snoqualmie National Forest, sections twenty-five, twenty-six, twenty-seven, twenty-eight, thirty-three, thirty-four, thirty-five, and thirty-six, township twenty-three north, range nine east, Willamette principal meridian.

You will be governed in your consideration of cases involving land within your respective districts coming within the purview of said act by the provisions of Circular No. 863, in re Consolidation of national forests, dated October 28, 1922.[d]

Very respectfully,

Geo. R. Wickham, *Assistant Commissioner.*

Approved January 9, 1923.

E. C. Finney, *First Assistant Secretary.*

[Reported, 49 L. D. 448]

Circular No. 873

EXCHANGE OF LANDS WITHIN THE MALHEUR NATIONAL FOREST, OREG.

Department of the Interior,
General Land Office,
Washington, February 17, 1923.

Registers and Receivers, United States Land Offices at Burns, La Grande, Lakeview, Portland, Roseburg, The Dalles, and Vale, Oreg.

Gentlemen: Your attention is called to an act of Congress, approved March 8, 1922 (42 Stat. 416), entitled "An act authorizing the exchange of lands within the exterior boundaries of the Malheur National Forest, in the State of Oregon, and for other purposes," which is as follows:

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[d] Circular No. 863 of Oct. 28, 1922, was revised Mar. 20, 1925. See p. 480.

> That the Secretary of the Interior be, and hereby is, authorized in his discretion to accept, on behalf of the United States, title to any lands in private ownership within the exterior boundaries of the Malheur National Forest which, in the opinion of the Secretary of Agriculture, are chiefly valuable for national forest purposes, and, in exchange therefor, may issue patent for an equal value of national forest land in the State of Oregon; or the Secretary of Agriculture may permit the grantor to cut and remove an equal value of timber from any national forest in the State of Oregon, the values in each instance to be determined by the Secretary of Agriculture and be acceptable to the owner as fair compensation. Timber given in such exchanges shall be cut and removed under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands conveyed to the United States under this act shall, upon acceptance of title, become part of the Malheur National Forest.

This act is one of a number of acts passed by Congress, providing for exchanges of lands in national forests. Special regulations governing each of such acts have not been prepared, but procedure under all is intended to be in accordance with the instructions of Circular No. 863, approved October 28, 1922, entitled "Consolidation of National Forests," which defined the procedure in detail and which is sufficiently comprehensive to afford ample guidance in proceeding under any of such acts.

Therefore, in considering applications for exchanges under this act, you are directed to be governed by the instructions given in said Circular No. 863, with such modifications as may be necessary and proper to make applicable to this act.

Very respectfully,

William Spry, *Commissioner.*

Approved February 17, 1923.

E. C. Finney, *First Assistant Secretary.*

[Reported, 49 L. D. 529]

Circular No. 888

EXCHANGE OF CERTAIN LANDS IN LINCOLN NATIONAL FOREST, N. MEX., FOR LANDS ON THE PUBLIC DOMAIN IN THE COUNTY OF OTERO, N. MEX.

Department of the Interior,
General Land Office,
Washington, April 9, 1923.

Registers and Receivers, Las Cruces and Roswell, N. Mex.

Gentlemen: The act of February 14, 1923 (42 Stat. 1245), entitled "An act providing for the acquirement by the United States of privately owned lands situated within certain townships in the Lincoln National Forest in the State of New Mexico by exchanging therefor lands on the public domain, also within such State," reads as follows:

> That whenever the owner or owners of any privately owned lands, situated within township eighteen south, range eleven east, or townships fifteen, six-

teen, seventeen, eighteen, and nineteen south, range twelve east, N. M. P. M., within the County of Otero and State of New Mexico, and within the present boundaries of the Lincoln National Forest, shall submit to the Secretary of Agriculture a proposal for the exchange of said lands for lands upon the public domain, situated in the County of Otero and State of New Mexico, and such Secretary shall be of opinion that the acquirement of the same by the United States for national forest purposes would be beneficial thereto, he is hereby authorized and empowered to transmit to the Secretary of the Interior such offer so made to him, together with such recommendation as he may see proper to make in connection therewith, together with a description of the property included in such offer and an estimate of the commercial or other value thereof, intrinsically or otherwise, and if he shall recommend the acquirement of the same by the United States under the provisions hereof, then, and in such event, the Secretary of the Interior shall be, and hereby is, authorized and empowered, in his discretion, to enter into and conclude negotiations with such owner or owners thereof, and in exchange for such designated privately owned lands, and upon conveyance by the owner or owners thereof, to the United States, by a good and sufficient deed, to cause to be patented to such owner or owners such acreage of non-mineral, non-irrigable grazing lands not suitable for agricultural purposes except for raising grass, situated within the said County of Otero, State of New Mexico, of equal total value, as near as he may be able to determine, to the lands so conveyed to the United States.

SEC. 2. That any lands conveyed to the United States under the provisions of this act shall, upon acceptance of the conveyance thereof, become and be a part of such Lincoln National Forest.

SEC. 3. That before any exchange of lands as above provided is effected, notice of such exchange proposal describing the lands involved therein, shall be published once each week for four consecutive weeks in some newspaper of general circulation in the county in which such lands so to be conveyed to the United States are situated.

You will be governed in your consideration of cases involving land within your respective districts coming within the purview of said act by the provisions of Circular No. 863, in re consolidation of national forests, dated October 28, 1922, so far as may be applicable.

It will be observed that the selections may be of "nonmineral, nonirrigable grazing lands not suitable for agricultural purposes except for raising grass," situated within said county of Otero, State of New Mexico, of equal total value as near as he may be able to determine to the lands so conveyed to the United States.

Under authority of the title to the act, the exchange is to be made for lands on the public domain. The law requires the Secretary of Agriculture to submit with his recommendation an estimate of the commercial or other value of the lands offered for exchange. Upon receipt of such recommendation and estimate in the General Land Office, the local office will be advised thereof and proceedings had in accordance with said Circular No. 863. Upon receipt of the formal application in this office examination by the Field Service will be directed with a view to ascertaining the value of the selected land and its worth as compared with the lands relinquished.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 9, 1923.

E. C. FINNEY, *First Assistant Secretary.*

[Reported. 49 L. D. 536]

CIRCULAR NO. 890

EXCHANGE OF LANDS IN MONTANA FOR LANDS IN GLACIER NATIONAL PARK

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 23, 1923.

CHIEF OF FIELD DIVISION,
Helena, Mont.,
SUPERINTENDENT OF GLACIER NATIONAL PARK,
Belton, Mont.,
REGISTERS AND RECEIVERS,
United States Land Offices, Montana.

GENTLEMEN: The act of February 28, 1923 (42 Stat. 1324), entitled: "An act to authorize an exchange of lands with owners of private land holdings within the Glacier National Park," reads as follows:

> That the Secretary of the Interior, for the purpose of eliminating private holdings of land within the Glacier National Park, is hereby empowered, in his discretion, to obtain for the United States the complete title to any or all of the lands held in private ownership within the boundaries of said park by accepting from the owners of such privately owned lands complete relinquishment thereof and by granting and patenting to such owners, in exchange therefor, in each instance, like public land of equal value situate in the State of Montana, after due notice of the proposed exchange has been given by publication for not less than thirty days in the counties where the lands proposed to be exchanged or taken in exchange are located.
>
> SEC. 2. That the value of all patented lands within said park, including the timber thereon, offered for exchange, and the value of other lands of the United States elsewhere situated, to be given in exchange therefor, shall be ascertained in such manner as the Secretary of the Interior may direct; and the owners of such privately owned lands within said park shall, before any exchange is effective, furnish the Secretary of the Interior evidence satisfactory to him of title to the patented lands offered in exchange; and the lands conveyed to the Government under this act shall be and remain a part of the Glacier National Park.

Applications.—Applications for an exchange under the act must be filed in the local land office having jurisdiction over the land selected, the application describing the land to be conveyed as well as the land selected, according to Government subdivisions. Nothing less than a legal subdivision may be surrendered or selected. The selected land must be entirely within the State of Montana. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney in fact, and when made by an agent or attorney in fact proof of authority must be furnished. The application must be accompanied by the necessary relinquishment, abstract of title, affidavits, and fees, as set forth in Circular No. 863, dated October 28, 1922, entitled: "Consolidation of National Forests," and you will be governed thereby in acting on the applications, noting on your records that the selection is made under the act of February 28, 1923 (42 Stat. 1324).

Action by register and receiver.—If a selection appears regular and in conformity with the law and these regulations the selection will be referred by the register and receiver to the Chief of Field Division for field examination of both the selected and the base lands to determine whether or not their value is equal within the meaning of this act, with reference to their characteristics as mineral, prairie, grazing, agricultural, timber, desert land or otherwise, as the case may be, and to submit report with specific recommendation. A representative of the Field Division will cooperate with a representative of the Superintendent of the Glacier National Park in the examination and valuation of the base lands within the Glacier National Park. Should the report of the Chief of Field Division be adverse to the applicant opportunity will be given the party in interest to amend his application to conform with the recommendation of the Field Division by the register and receiver of the United States land office in which the application was filed.

Publication of notice.—If the Chief of Field Division recommends the approval of the exchange and the selection appears regular and in conformity with the law and these regulations, the register and receiver will notify the applicant and require him, within 30 days from receipt of notice, to begin publication of notice of his application in accordance with said Circular No. 863, and in due time to submit proof thereof.

Protests.—Protests will be disposed of as provided in said Circular No. 863.

Action on the application.—Should no objections appear on your records, you will certify the condition of the record on the application and will promptly transmit the original application and accompanying papers to this office by special letter.

Upon receipt of an application in the General Land Office the same will be examined at as early a date as practicable and if found defective an opportunity will be given the parties in interest to cure the defects, if possible. If the selection appears regular and in conformity with the law and these regulations the selection, with the record, will, in the absence of objections, be transmitted to the Secretary of the Interior with appropriate recommendation.

If the Secretary decides that the application should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the laws of the State of Montana and to have the abstract of title extended down to and including the date the deed of relinquishment or conveyance was recorded.

If the Secretary be of the opinion that further evidence as to value and character of land involved is necessary, he may institute such inquiry as he may deem advisable.

The Secretary of the Interior may, in the exercise of his discretion, withhold his approval from any application made under the provisions of this act although the applicant may have complied with the rules and regulations herein prescribed.

Very respectfully.

William Spry,
Commissioner, General Land Office.

Concurring.

Arno B. Cammerer,
Director, National Park Service.

Approved April 23, 1923.

E. C. Finney, *First Assistant Secretary.*

[Reported, 49 L. D. 645]

CIRCULAR No. 900

EXCHANGE OF PRIVATELY OWNED LANDS WITHIN THE RAINIER NATIONAL FOREST FOR GOVERNMENT LANDS WITHIN OTHER NATIONAL FORESTS IN THE STATE OF WASHINGTON

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 11, 1923.

Registers and Receivers, United States Land Office, State of Washington:

The act of December 20, 1921 (42 Stat. 350), entitled "An act authorizing exchanges of lands within the Rainier National Forest, in the State of Washington," reads as follows:

> That the Secretary of the Interior be, and he is hereby, authorized in his discretion to accept on behalf of the United States title to any lands not in Government ownership within the Rainier National Forest if, in the opinion of the Secretary of Agriculture, such lands are chiefly valuable for national-forest purposes, and in exchange therefor may issue patent for not to exceed an equal value of Government land within any National Forest within the State of Washington, or the Secretary of Agriculture may permit the grantor to cut and remove an equal value of national-forest timber in any national forest in the State of Washington, the values in each instance to be determined by the Secretary of Agriculture and to be acceptable to the owner as fair compensation. Timber given in such exchanges shall be cut and removed under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands conveyed to the United States under this act shall, upon acceptance of title, become parts of the Rainier National Forest.

You will be governed in your consideration of cases involving lands within your respective districts coming within the purview of said act by the provisions of Circular No. 863 in re consolidation of national forests dated October 28, 1922 [e] (49 L. D. 365), so far as may be applicable.

GEORGE R. WICKHAM, *Acting Commissioner.*

Approved.

E. C. FINNEY, *First Assistant Secretary.*

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[e] Circular No. 863 of Oct. 28, 1922, was revised Mar. 20, 1925. See p. 480.

[Reported, 50 L. D. 662]

CIRCULAR NO. 964

EXCHANGE OF LANDS IN UTAH FOR LANDS IN UTAH NATIONAL PARK AND ZION NATIONAL PARK

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 10, 1924.

CHIEF OF FIELD DIVISION, *Salt Lake City, Utah,*
SUPERINTENDENT OF UTAH NATIONAL PARK, AND
ZION NATIONAL PARK, *Springdale, Utah,*

Registers and Receivers, United States Land Offices, Utah.

GENTLEMEN: The act of June 7, 1924 (43 Stat. 593), entitled "An act to establish the Utah National Park in the State of Utah," reads as follows:

> That there is hereby reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and dedicated and set apart as a public park for the benefit and enjoyment of the people, under the name of the "Utah National Park," the tract of land in the State of Utah particularly described by and included within metes and bounds, as follows, to wit:
>
> Unsurveyed sections 31 and 32, township 36 south, range 3 west; surveyed section 36, township 36 south, range 4 west; north half, southwest quarter and west half of the southeast quarter of partially surveyed section 5; unsurveyed sections 6 and 7, west half, west half of the northeast quarter, and west half of the southwest quarter of partially surveyed section 8, partially surveyed section 17 and unsurveyed section 18, township 37 south, range 3 west; and unsurveyed sections 1, 12, and 13, township 37 south, range 4, all west of the Salt Lake Meridian, in the State of Utah: *Provided,* That all the land within the exterior boundaries of the aforesaid tract shall first become the property of the United States. :
>
> SEC. 2. That the administration, protection, and promotion of said Utah National Park shall be exercised under the direction of the Secretary of the Interior by the National Park Service, subject to the provisions of the act of August 25, 1916, entitled "An act to establish a National Park Service, and for other purposes."
>
> SEC. 3. That nothing herein contained shall affect any valid existing claim, location, or entry under the land laws of the United States, whether for homestead, mineral, right of way, or any other purposes whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land: *Provided,* That the Secretary of the Interior is hereby authorized to exchange, in his discretion, alienated lands in this and Zion National Park for unappropriated and unreserved public lands of equal value and approximately equal area in the State of Utah outside of said parks.

Applications.—Applications for an exchange under the act must be filed in the local land office having jurisdiction over the land selected, the application describing the land to be conveyed as well as the land selected, according to Government subdivisions. Nothing less than a legal subdivision may be surrendered or selected. The selected land must be entirely within the State of Utah. Selections must be made by the owner of the land relinquished or in his name by a duly authorized agent or attorney in fact, and when made by an agent or attorney in fact proof of authority must be furnished. The application must be accompanied by the necessary relinquishment, abstract of title, affidavits, and fees, as set forth in

Circular No. 863, dated October 28, 1922,[f] entitled: "Consolidation of National Forests," and you will be governed thereby in acting on the applications, noting on your records that the selection is made under the act of June 7, 1924 (43 Stat. 593).

Action by register and receiver.—If a selection appears regular and in conformity with the law and these regulations the selection will be referred by the register and receiver to the Chief of Field Division for field examination of both the selected and the base lands to determine whether or not their value is equal within the meaning of this act, with reference to their characteristics as mineral, prairie, grazing, agricultural, timber, desert land or otherwise, as the case may be, and to submit report with specific recommendation. A representative of the Field Division will cooperate with a representative of the superintendent of the Utah National Park and Zion National Park in the examination and valuation of the base lands within the Utah National Park and Zion National Park. Should the report of the Chief of Field Division be adverse to the applicant opportunity will be given the party in interest to amend his application to conform with the recommendation of the Field Division by the register and receiver of the United States land office in which the application was filed.

Publication of notice.—If the Chief of Field Division recommends the approval of the exchange and the selection appears regular and in conformity with the law and these regulations, the register and receiver will notify the applicant and require him, within 30 days from receipt of notice, to begin publication of notice of his application in accordance with said Circular No. 863, and in due time to submit proof thereof.

Protests.—Protests will be disposed of as provided in said Circular No. 863.

Action on the application.—Should no objections appear on your records, you will certify the condition of the record on the application and will promptly transmit the original application and accompanying papers to this office by special letter.

Upon receipt of an application in the General Land Office the same will be examined at as early a date as practicable and if found defective an opportunity will be given the parties in interest to cure the defects, if possible. If the selection appears regular and in conformity with the law and these regulations, the selection, with the report, will, in the absence of objections, be transmitted to the Secretary of the Interior with appropriate recommendation.

If the Secretary decides that the application should be allowed, the applicant will be required to have his relinquishment recorded in the manner prescribed by the laws of the State of Utah and to have the abstract of title extended down to and including the date the deed or relinquishment or conveyance was recorded.

If the Secretary be of the opinion that further evidence as to value and character of land involved is necessary, he may institute such inquiry as he may deem advisable.

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[f] Circular No. 863 of Oct. 28, 1922, was revised Mar. 20, 1925. See p. 480.

The Secretary of the Interior may, in the exercise of his discretion, withhold his approval from any application made under the provisions of this act although the applicant may have complied with the rules and regulations herein prescribed.

Very respectfully,

S. V. PROUDFIT,
Acting Assistant Commissioner.

Concurring:

ARNO B. CAMMERER,
Acting Director National Park Service.

Approved November 10, 1924.

E. C. FINNEY, *First Assistant Secretary.*

[Reported, 51 L. D. 69]

CIRCULAR NO. 863

CONSOLIDATION OF NATIONAL FORESTS

(Reprint of regulations of October 28, 1922 (49 L. D. 365), with amendments of February 1, 1924, Circular 918 (50 L. D. 261); February 4, 1924, Circular 919 (50 L. D. 268), and February 14, 1925, Circular 980.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 20, 1925.

Registers and Receivers, United States Land Offices.

GENTLEMEN: 1. The act of March 20, 1922 (42 Stat. 465), entitled "An act to consolidate national forest lands," reads as follows:

> That, when the public interests will be benefited thereby, the Secretary of the Interior be, and hereby is, authorized in his discretion to accept on behalf of the United States title to any lands within exterior boundaries of the national forests which, in the opinion of the Secretary of Agriculture, are chiefly valuable for national forest purposes, and in exchange therefor may patent not to exceed an equal value of such national forest land, in the same State, surveyed and nonmineral in character, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State; the values in each case to be determined by the Secretary of Agriculture: *Provided*, That before any such exchange is effected notice of the contemplated exchange reciting the lands involved shall be published once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in some like newspaper published in any county in which may be situated any lands or timber to be given in such exchange. Timber given in such exchange shall be cut and removed under the laws and regulations relating to the national forests, and under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands conveyed to the United States under this act shall, upon acceptance of title, become parts of the national forest within whose exterior boundaries they are located.

The act of March 20, 1922, was amended by the act of February 28, 1925 (43 Stat. 1090), by adding thereto the following section:

> SEC. 2. Either party to an exchange may make reservations of timber, minerals, or easements, the values of which shall be duly considered in determining the values of the exchanged lands. Where reservations are made in lands conveyed to the United States the right to enjoy them shall be subject to such

reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of Agriculture; where mineral reservations are made in lands conveyed by the United States it shall be so stipulated in the patents, and that any person who acquires the right to mine and remove the reserved deposits may enter and occupy so much of the surface as may be required for all purposes incident to the mining and removal of the minerals therefrom, and may mine and remove such minerals upon payment to the owner of the surface for damages caused to the land and improvements thereon: *Provided,* That all property, rights, easements, and benefits authorized by this section to be retained by or reserved to owners of lands conveyed to the United States shall be subject to the tax laws of the States where such lands are located.

2. *Initial application to forest officers.*—All preliminary negotiations relating to an exchange under the act are to be conducted with the local representatives of the Forest Service, and any owner of land subject to exchange who desires to take advantage of the privileges conferred by this act must file with the local national forest officers an informal application describing the land to be conveyed as well as that to be selected, or if timber is desired in exchange the land on which such timber is located. The land must be specifically described according to Government subdivisions, and, as a rule, nothing less than a legal subdivision may be surrendered or selected. An exception to this rule may be made only where in the opinion of the Secretary of Agriculture and the Secretary of the Interior such exception would be advantageous to the Government. The selected land or timber must be entirely within national forest boundaries and in the same State in which the relinquished lands are located.

The applicant must show by affidavit or other evidence satisfactory to the Forest Service that he is the owner of the land to be conveyed, and that the land relinquished and the land or timber selected are equal in value.

3. *Approval of the exchange.*—When a tentative agreement has been reached between the applicant and the local national forest officer the case will be submitted to the district forester and if approved by him to the forester at Washington, D. C., for consideration.

If the Forester finds the exchange to be in the public interest and that an equality of values exists, he will request the Secretary of Agriculture to advise the Secretary of the Interior that the acceptance of the certain described lands offered under the act and the granting in lieu thereof of other certain described lands, or of stumpage upon other described lands, meets with the approval of the Department of Agriculture; that the base lands are chiefly valuable for national forest purposes, and that the value of the offered and selected lands is approximately equal.

The Secretary of the Interior, upon receipt of such letter from the Secretary of Agriculture, unless he has reasons to do otherwise, will approve the exchange, subject to the submission of acceptable title to the lands tendered and to full compliance by the applicant with these regulations, and subject to any protests or other valid objections which may appear.

4. *Formal application to district land officers.*—The General Land Office will notify the district land officers of the district in which the land or timber to be selected is located of the approval of the exchange, and such district land officers will in turn notify the person desiring to make such exchange of the approval thereof and that he

is allowed 60 days from receipt of notice within which to file his formal application specifically describing the land selected, or the land on which timber selected is located, and the land to be relinquished. The application must be accompanied by the necessary affidavits and fees.

No fixed forms of application for selection under this act and accompanying affidavits as to the relinquished and selected lands have been prepared, but these instructions should be followed as nearly as possible.

Each application will be given a serial number and have the hour and date of filing stamped thereon. You will note on your records against the land, " Selected under act of March 20, 1922 (42 Stat. 465), by ——— ——— (date ———, serial No. ——, pending)."

5. *Affidavits required.*—The applicant will be required to show by affidavit that he is 21 years of age, and otherwise legally capable of carrying through the transaction; that he is the owner of the land relinquished, and that said land is not the basis of another selection or exchange. He must also furnish his own affidavit or the affidavit of some credible person possessed of the requisite personal knowledge, showing that the land selected is nonmineral in character; that it contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor; that it is not in any manner occupied or claimed adversely to the selector.

These affidavits may be executed before any officer qualified to administer oaths.

6. *Fees.*—Fees must be paid by the applicant at the rate of $1 each to the register and receiver for each 160 acres, or fraction thereof, of the base lands surrendered and conveyed to the Government.

7. *Publication and posting.*—Within 30 days from the filing of his application to select land or timber the applicant will begin publication of notice thereof, at his own expense, in a newspaper or newspapers having general circulation in the county or counties in which the land relinquished and the land or timber selected are situated, the newspapers to be designated by the register. Such notice must be published once each week for four successive weeks, during which time a similar notice of the application must be posted in the local land office. The notice should describe the land or timber applied for as well as the land to be given in exchange and give the date of filing the application and state that the purpose thereof is to allow all persons claiming the land selected or having bona fide objections to such application an opportunity to file their protests with the local officers of the land district in which the land selected is situated.

Proof of publication shall consist of an affidavit of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. The register shall certify to the posting in his office. The dates of such publication and posting must in all cases be given.

8. *Action by district land officers.*—Should a protest be filed, all the papers should be transmitted to the General Land Office for consideration; but should no protest be filed against the allowance of the selection within 30 days from the date of the first publication of notice, and no objection appear on your records, you will notify the

selector that he is allowed 60 days from receipt of notice within which to file the relinquishment or reconveyance, and abstract of title, as prescribed in paragraphs numbered 9, 10, and 11.

The proof papers necessary to complete a selection should be filed at the same time. However, if additional time is necessary to complete the abstract, the same will be granted upon a proper showing.

After the filing of the required relinquishment, abstract of title, and other proof, the register will certify the condition of the record on the application and will promptly transmit the original application and accompanying papers to this office by special letter.

9. *Relinquishment or reconveyance.*—The deed of relinquishment or reconveyance of the land tendered as a basis of exchange must be executed and acknowledged in the same manner as a conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. The deed should also be duly recorded.

Where the relinquishment or reconveyance is made by an individual it must show whether the person relinquishing is married or single, and if married the wife or husband of such person, as the case may be, must join in the execution of the relinquishment or reconveyance in such a manner as to effectually bar any right of curtesy or dower, or any claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State in which the relinquished land is situated such wife or husband has no interest whatsoever, present or prospective, which makes her or his joining in the relinquishment or reconveyance necessary.

Where the relinquishment or reconveyance is by a corporation, it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer, and should bear the impression of the corporate seal.

10. *Abstracts of title.*—Each relinquishment or reconveyance must be accompanied by a duly authenticated abstract of title, showing that at the time the reconveyance was recorded the title was in the party making the conveyance and that the land was free from conflicting record claims, tax liabilities, judgment or mortgage liens, pending suits or other incumbrances.

The certificate of authentication of the abstract must be signed by the recorder of deeds or other proper official, under his official seal, and must show that the title memoranda is a full, true, and complete abstract of all matters of record or on file in his office, including all conveyances, mortgages, or other incumbrances, judgments against the various grantors, mechanics' liens, lis pendens, or other instruments which are required by law to be filed with the recording officers, affecting in any manner whatsoever the title to the described land. The authenticity of the tax records must be certified showing that all taxes levied or assessed against the land, or that could operate thereon as a lien, have been fully paid; or whether there is a tax lien although such tax is not assessed, due, or payable; that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. The absence of judgment liens or pending suits against the various grantors which might affect the title of the land relinquished or reconveyed must be shown by the official certificate of the clerks of the courts of record, whose judgments, under the laws of the United States or the State in which the land is situated, would be a lien on the land reconveyed or relinquished. If it is preferred the abstract may be authenticated by an abstractor or by an abstract company, approved by the General Land Office, in accordance with section 42 of the Mining Regulations of April 11, 1922 (49 L. D. 15, 69).

11. *Application for timber.*—If timber is desired in exchange for the land to be conveyed to the United States, proof that notice has been published and posted will be all the evidence necessary to be filed in regard to the timber, but all the proof required in connection with the land offered as a basis for the exchange must be filed.

12. *Action by the General Land Office.*—The application and accompanying proof will, upon receipt by the General Land Office, be examined at as early a date as practicable, and if found defective opportunity will be given the parties in interest to cure the defects, if possible. If the selection appears regular and in conformity with the law and these regulations, the selection will, in the absence of objections, if for land only, be formally approved for patent by letter to the district land office, but if timber is taken in exchange the Secretary of Agriculture will, upon advice of the Secretary of the Interior that the regulations have been fully complied with, issue proper permit or certificate for timber.

13. *Practice and procedure.*—Notice of additional or further requirements, rejections, or other adverse actions of registers and receivers, the commissioner or the Secretary, will be given and the right of appeal, review, or rehearing recognized in the manner now prescribed by the Rules of Practice, except as otherwise herein provided. A protest or other objection against the selection or the application to select, must be filed in the district land office to be forwarded to the General Land Office for consideration and disposal. Application to enter filed subsequent to any conflicting application to select will be rejected, except where the subsequent application to enter is supported by allegations of prior right, in which event it will be transmitted to the General Land Office with appropriate recommendation. Applications presented under these regulations not in substantial conformity with the requirements herein made, not accompanied by the prescribed proof, or where land offered as basis of exchange or the land selected is not situated within the boundaries prescribed by the act will be rejected, subject to appeal or curing of the defect where possible.

14. *Right reserved to reject any and all applications.*—Applications to select either land or timber under the provisions of the act will not defeat the right of the United States to withdraw or reserve the land for such purposes or uses as may be proper prior to the filing in the district land office of an application complete in all particulars.

15. *Other forest exchanges.*—Other acts provide for exchanges of lands in national forests. Special regulations governing these acts have not been prepared, but exchanges thereunder must be made under the foregoing regulations, modified, however, to meet the limitations, conditions, and provisions of the acts mentioned. The acts referred to are as follows: January 9, 1903 (32 Stat. 765); February 28, 1911 (36 Stat. 960); March 4, 1911 (36 Stat. 1357); July 25,

1912 (37 Stat. 200); July 31, 1912 (37 Stat. 241); August 22, 1912 (37 Stat. 323); June 24, 1914 (38 Stat. 387); July 3, 1916 (39 Stat. 344); September 8, 1916 (39 Stat. 846); September 8, 1916 (39 Stat. 852); June 5, 1920 (41 Stat. 980); February 27, 1921 (41 Stat. 1148); March 4, 1921 (41 Stat. 1364); March 4, 1921 (41 Stat. 1366); February 2, 1922 (42 Stat. 362); and other similar acts.

Very respectfully.

William Spry,
Commissioner, General Land Office.

Approved March 20, 1925.

E. C. Finney,
Acting Secretary of the Interior.
W. M. Jardine,
Secretary of Agriculture.

[Reported, 51 L. D. 75]

Circular No. 993

EXCHANGE OF LAND WITHIN THE SANTA BARBARA GRANT FOR TIMBER WITHIN NATIONAL FORESTS OF NEW MEXICO

Department of the Interior,
General Land Office,
Washington, March 21, 1925.

Registers and Receivers, United States Land Offices, New Mexico.

Gentlemen: The act of January 12, 1925 (43 Stat. 739), entitled "An act providing for the acquirement by the United States of privately owned lands within Taos County, New Mexico, known as the Santa Barbara grant, by exchanging therefor timber, or lands and timber, within the exterior boundaries of any national forest situated within the State of New Mexico," reads as follows:

> That the Secretary of the Interior be, and he hereby is, authorized in his discretion to accept on behalf of the United States title to all or any part of privately owned lands, situated within the Santa Barbara grant, located within the county of Taos, State of New Mexico, if in the opinion of the Secretary of Agriculture public interests will be benefited thereby, and the lands are chiefly valuable for national forest purposes, and in exchange therefor the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State; the values in each case to be determined by the Secretary of Agriculture and acceptable to the grantor as a fair compensation. Timber given in exchange shall be cut and removed under the laws and regulations relating to the national forests, and under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture.
>
> Sec. 2. That lands offered for exchange hereunder and not covered by public land surveys shall be identified by metes and bounds surveys and that such surveys and the plats and field notes thereof shall be made by employees of the United States Forest Service and approved by the United States Surveyor General.
>
> Sec. 3. That any lands conveyed to the United States under the provisions of this act shall, upon acceptance of the conveyance thereof, become and be a part of Carson National Forest.
>
> Sec. 4. That before any exchange of lands for timber as above provided is effected, notice of such exchange proposal, describing the lands involved therein, shall be published once each week for four consecutive weeks in some newspaper of general circulation in the county in which such lands so to be conveyed to the United States are situated.

By proclamation of January 23, 1925, the lands, known as said Santa Barbara grant, were included within the boundaries of said Carson National Forest.

You will be governed in your action upon applications for exchanges under said act by the regulations contained in Circular No. 863 entitled "Consolidation of National Forests," modified, however, in accordance with the provisions of section 2 of the act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved March 21, 1925.

E. C. FINNEY,
Acting Secretary of the Interior.
W. M. JARDINE,
Secretary of Agriculture.

CIRCULAR No. 1002

CONSOLIDATING CERTAIN LANDS WITHIN THE SNOQUALMIE NATIONAL FOREST

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 7, 1925.

Registers and Receivers, United States Land Offices, Seattle and Spokane, Wash.

GENTLEMEN: The act of February 28, 1925 (43 Stat. 1074), entitled "An act to consolidate certain lands within the Snoqualmie National Forest," reads as follows:

> That the provisions of the act of March 20, 1922, "An act to consolidate national forest lands," be, and the same are hereby, extended to the following-described lands to the same extent that such provisions would apply were said lands within the exterior boundaries of a national forest:
>
> Township 26 north, range 10 east, sections 1, 2, 3, 10, 11, 12, and 13; township 26 north, range 11 east, section 17 to 29, inclusive, and sections 34, 35, and 36; township 26 north, range 12 east, sections 13, 19 to 35, inclusive; township 27 north, range 9 east, sections 10 to 15, inclusive, section 22, and north half of sections 23 and 24; township 27 north, range 10 east, section 15, east half of section 16, west half of section 18, south half and northwest quarter of section 19, south half of section 20, south half and northeast quarter of section 21, section 22, and sections 26, 27, 28, 29, 30, 34, and 35, all Willamette base and meridian.
>
> SEC. 2. That all public lands within the foregoing areas are hereby added to and made parts of the Snoqualmie National Forest subject to all valid adverse rights established prior to the passage of this act.

You will be governed in your action upon applications for exchanges under said act by the regulations contained in Circular No 863, entitled "Consolidation of National Forests," modified, however, in accordance with the provisions of said act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

E. C. FINNEY,
Acting Secretary of Interior.
R. W. DUNLAP,
Acting Secretary of Agriculture.

[Reported, 51 L. D. 133]

CIRCULAR No. 1015

ADDITION OF CERTAIN LANDS TO MOUNT HOOD NATIONAL FOREST AUTHORIZED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 7, 1925.

Registers and Receivers, United States Land Offices, Oregon.

GENTLEMEN: The act of February 28, 1925 (43 Stat. 1079), entitled "An act to authorize the addition of certain lands to the Mount Hood National Forest," reads as follows:

> That any of the following-described lands which are found by the Secretary of Agriculture to be chiefly valuable for national forest purposes may be offered in exchange under the provisions of the act of March 20, 1922 (Public No. 173), and upon acceptance of title shall become parts of the Mount Hood National Forest:
>
> Township 2 north, range 9 east: Sections 22, 27, 28, 29, 30, 31, 32, 33, 34, southwest quarter northwest quarter, southwest quarter southeast quarter, and southwest quarter of section 35.
>
> Township 1 north, range 9 east: Sections 8, 9, 10, 11; north half northeast quarter, southwest quarter northeast quarter, northwest quarter, north half southwest quarter, section 14; all of sections 15, 16, 17, 18, 19, 20; north half southwest quarter, and northwest quarter southeast quarter of section 21; north half northwest quarter, southeast quarter northeast quarter, south half southwest quarter, southeast quarter of section 22; south half north half and the south half of section 23; all of section 26 and 27; northeast quarter northeast quarter, south half northeast quarter, southeast quarter northwest quarter, south half of section 28; southeast quarter and southeast quarter southwest quarter of section 29; northeast quarter and lots 1 to 11, inclusive, of section 30; southeast quarter northeast quarter southeast quarter of section 31; all of sections 32, 33, 34, and 35.
>
> SEC. 2. All public lands within the areas described in section 1 hereof are hereby added to the Mount Hood National Forest and shall hereafter become subject to all laws and regulations applicable to National Forests. But the addition of said lands shall not affect any entry or vested right under the public land laws initiated prior to the passage of this act.

You will be governed in your action upon applications for exchanges under said act by the regulations contained in Circular No. 863, entitled "Consolidation of National Forests," modified, however, in accordance with the provisions of said act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 7, 1925.

E. C. FINNEY,
Acting Secretary of Interior.
R. W. DUNLAP,
Acting Secretary of Agriculture.

CIRCULAR No. 1001

EXCHANGE OF COAL LANDS WITHIN THE CUSTER NATIONAL FOREST

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 8, 1925.

Registers and Receivers, United States Land Office, Billings, Mont.

GENTLEMEN: The act of March 3, 1925 (43 Stat. 1117), entitled: "An act for the exchange of lands in the Custer National Forest, Montana," reads as follows:

> That lands of the United States within the Custer National Forest, Montana, which have been withdrawn or classified as coal lands or are valuable for coal, may be exchanged under the provisions of the act of March 20, 1922 (Forty-second Statutes at Large, page 465), with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same.

You will be governed in your action upon applications for exchanges under said act by the regulations contained in Circular No. 863, entitled: " Consolidation of National Forests," modified, however, in accordance with the provisions of said act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 8, 1925.

E. C. FINNEY,
Acting Secretary of Interior.
R. W. DUNLAP,
Acting Secretary of Agriculture.

CIRCULAR No. 1026

AUTHORIZING THE ADDITION OF CERTAIN LANDS TO THE UMATILLA, WALLOWA, AND WHITMAN NATIONAL FORESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 20, 1925.

REGISTER, *The Dalles, Oreg.*

SIR: The act of March 4, 1925 (43 Stat. 1279), entitled "An act to add certain lands to the Umatilla, Wallowa, and Whitman National Forests in Oregon," reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That within the following-described areas any lands not in Government ownership which are found by the Secretary of Agriculture to be chiefly valuable for national-forest purposes may be offered in exchange under the provisions of the act of March 20, 1922, (Public No. 173), upon notice as therein provided, and upon acceptance of title shall become parts of the Umatilla, Wallowa, or Whitman National Forests; and any of such described areas in Government ownership chiefly valuable for national-forest purposes and not now parts of any national forest may be added to said national forests as herein provided by proclamation of the President, subject to all valid existing entries.

* * * * * * *

(List of lands omitted.)

You will be governed in your action upon applications for exchanges under this act by the regulations contained in Circular No. 863, entitled "Consolidation of National Forests."

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved August 20, 1925.

HUBERT WORK,
Secretary of the Interior.
R. W. DUNLAP,
Acting Secretary of Agriculture.

CIRCULAR No. 1027

AUTHORIZING THE ADDITION OF CERTAIN LANDS TO THE WHITMAN NATIONAL FOREST

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 20, 1925.

REGISTERS, *The Dalles, Vale, Oreg.*

GENTLEMEN: The act of March 4, 1925 (43 Stat. 1282), entitled "An act to authorize the addition of certain lands to the Whitman National Forest," reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That within the following described areas any lands not in Government ownership which are found by the Secretary of Agriculture to be chiefly valuable for national forest purposes may be offered in exchange under the provisions of the act of March 20, 1922 (Forty-second Statutes at Large, page 465), upon notice as therein provided, and upon acceptance of title, shall become parts of Whitman National Forest, Oregon, and any of such described areas in Government ownership chiefly valuable for national forest purposes and not now parts of a national forest may be added to the Whitman National Forest by proclamation of the President, subject to all valid existing claims.

* * * * * * *

(List of lands omitted.)

You will be governed in your action upon applications for exchanges under this act by the regulations contained in Circular No. 863, entitled "Consolidation of National Forests."

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved August 20, 1925.

HUBERT WORK,
Secretary of the Interior.
R. W. DUNLAP,
Acting Secretary of Agriculture.

[Reported, 31 L. D. 372]

INSTRUCTIONS RELATIVE TO FOREST-RESERVE LIEU LAND SELECTIONS, ACTS JUNE 4, 1897 (30 STAT. 36), AND JUNE 6, 1900 (31 STAT. 614)

Department of the Interior,
General Land Office,
Washington, D. C., July 7, 1902.[3]

Registers and Receivers, United States Land Offices.

Gentlemen: The act of Congress approved June 4, 1897 (30 Stat. 34, 36), provides among other things with respect to forest reserves established and to be established under section 24 of the act of March 3, 1891 (26 Stat. 1095)—

> That in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent; and no charge shall be made in such cases for making the entry of record or issuing the patent to cover the tract selected: *Provided further*, That in cases of unperfected claims the requirements of the law respecting settlement, residence, improvements, and so forth are complied with on the new claims, credit being allowed for the time spent on the relinquished claims.

By a subsequent act, approved June 6, 1900 (31 Stat. 614), it is declared—

> That all selections of land made in lieu of a tract covered by an unperfected bona fide claim, or by a patent, included within a public forest reservation, as provided in the act of June fourth, eighteen hundred and ninety-seven * * * shall be confined to vacant surveyed and nonmineral public lands which are subject to homestead entry not exceeding in area the tract covered by such claim or patent: *Provided*, That nothing herein contained shall be construed to affect the rights of those who, previous to October first, nineteen hundred, shall have delivered to the United States deeds for lands within forest reservations and make application for specific tracts of lands in lieu thereof.

This provision was reenacted March 3, 1901 (31 Stat. 1037).

GENERALLY

1. Relinquishments under the above acts may include any tract within the limits of a forest reserve covered by an unperfected bona fide claim under any of the general land laws of the United States, or to which the full legal title has passed out of the Government and beyond the control of the Land Department by a patent or by that which is the full legal equivalent of a patent.

2. Mineral lands, whether covered by patent or not, can not be relinquished as bases for lieu selections under said acts.

3. Relinquishments made in pursuance of said acts must be executed, acknowledged, and recorded in the same manner as conveyances of real property are required to be executed, acknowledged, and recorded by the laws of the State or Territory in which the lands are situated.

4. Selections after October 1, 1900, are authorized to be made only of vacant, surveyed, nonmineral lands which are subject to homestead entry.

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[3] See circulars of May 16, 1905, p. 495, and Dec. 30, 1922 (No. 869), p. 497.

5. Selections filed prior to October 1, 1900, may embrace unsurveyed lands, but must, within 30 days from notice by the local officers of the filing in their office of the township plat of survey, be made to conform to such survey.

6. Selections of unsurveyed lands will not be passed to patent until after four months following the filing of said plat in the local office. This is to enable any person claiming an adverse right therein to regularly assert the same.

7. The land relinquished and the land selected must be, as near as practicable, equal in area.

8. In a selection made prior to the receipt by the local officers of the instructions of this office dated January 16, 1900, for less land than that relinquished, 90 days from notice is allowed the selector in which to make additional selection in full satisfaction of such relinquishment, or waive his right to do so, and in default thereof the relinquishment and the partial selection will be rejected. This is not a new rule, but rather a restatement of the existing practice.

9. The rule of approximation permitted in entries under the homestead and other public land laws may properly be applied to selections under the acts aforesaid. (See 31 L. D. 225.)

10. Should a selection be presented, based upon a relinquishment or reconveyance to the United States of lands which are not at the date of the filing of such selection within the limits of a forest reserve, the selection will be rejected, unless it appears that such lands were within the limits of such a reserve at the date of the recording on the proper records of such relinquishment or reconveyance.

11. Selections should be filed in the proper land office within a reasonable time after the relinquishment or reconveyance has been recorded in the manner indicated.

12. In all cases where the showing required in these instructions, both as to the title or claim to the land relinquished and as to the character and condition of the land selected, is not made by the selector at the time of filing the selection, you will reject the selection and give due notice thereof to the parties interested, in which notice the reasons for your action must be stated. Appeal from such action may be taken under the rules as in other cases. At the expiration of the time allowed for appeal, you will forward the record with your report thereon.

13. If protest or objection shall be at any time filed against the selection, you will forward the same to this office for consideration in connection with the selection.

LAND COVERED BY PATENT OR PATENT CERTIFICATE

14. Where the legal title to the relinquished land has passed out of the United States, there must be filed with each relinquishment a duly authenticated abstract of title showing that at the time the relinquishment was filed for record the legal title was in the party making the relinquishment and that the land was free from liability for taxes, pending suits, judgment liens, and from other encumbrance.

15. Where the legal title to the relinquished land has not passed out of the United States, but patent certificate therefor has issued and is outstanding, there must be filed with each relinquishment a duly authenticated abstract of title showing that at the time the relinquishment was filed for record the full equitable title was in the party making the relinquishment and that the land was free from liability for taxes, pending suits, judgment liens, and from other encumbrance.

16. A relinquishment by an individual of land the legal title to which has passed out of the United States, or for which patent certificate is outstanding, must show whether the person relinquishing is married or single; and if married, the wife or husband of such person, as the case may be, must join in the execution of the relinquishment in such manner as to effectually bar any right or estate of dower, curtesy, or homestead, or any other claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State or Territory in which the relinquished land is situated such wife or husband has no interest whatever, present or prospective, which makes her or his joinder in the relinquishment necessary.

17. Selections in lieu of lands covered by patent or patent certificate may embrace contiguous or noncontiguous tracts in the same land district.

18. All papers and proofs necessary to complete a selection must be filed at one and the same time, and until they are all presented, no right will vest under the selection.

19. A selection based upon land covered by a patent or by a patent certificate must be made by the owner of the land relinquished or by a duly authorized agent or attorney in fact; and when made by an agent or attorney in fact, proof of authority must be furnished.

20. No fees or commissions are required to be paid in any selection made in lieu of land covered by a patent or by a patent certificate.

21. The affidavit to support a selection based upon the relinquishment of land covered by a patent or by a patent certificate must be made by the selector, or by some credible person possessed of the requisite personal knowledge in the premises, and must be filed with and as a part of the selection. This affidavit must show that the selected land is nonmineral in character; that it contains no salt springs or deposits of salt in any form, sufficient to render it chiefly valuable therefor; and that it is not in any manner occupied adversely to the selector. (Form 4–061*a*.)

22. In making selections in lieu of relinquished lands covered by patent or patent certificate, Form 4–643, or its equivalent, should be used; and in every such selection the selector must show, to the satisfaction of the local officers, by affidavit or otherwise, in addition to the other proofs required, that the relinquished land does not constitute the basis for any other selection made by him, and also whether or not the selected land is situated within 6 miles of a mining claim.

23. Where the selection is within 6 miles of a mining claim or within a mineral township you will require the selector, within

20 days from the filing of his selection, to begin publication of notice thereof at his own expense in a newspaper to be designated by the register as of general circulation in the vicinity of the land and published nearest thereto. Such publication must cover a period of 30 days, during which time a similar notice of the selection must be posted in the local land office and upon each and every noncontiguous tract included in the selection.[g]

24. The notice should describe the land selected and give the date of selection, and state that the purpose thereof is to allow all persons claiming the selected land under the mining laws, or desiring to show it to be mineral in character, an opportunity to file objection to such selection with the local officers for the land district in which the land is situate and to establish their interest therein or the mineral character thereof.

25. Proof of publication shall consist of an affidavit of the publisher, or of the foreman or other proper employee, of the newspaper in which the notice was published, with a copy of the published notice attached. Proof of posting upon the land, and that such notice remained posted during the entire period required, shall be made by the selector or some credible person having personal knowledge of the fact. The register shall certify to posting in his office. The first and last dates of such publication and posting shall, in all cases, be given.

26. Where, at the time of the filing of a selection in lieu of relinquished land covered by a patent or by a patent certificate, the showing required by these instructions is fully made by the selector, the selection will be received by the register and receiver and proper notation thereof made upon their records. If publication of notice of the selection, as provided in paragraphs 23, 24, and 25 of these instructions, is not necessary, the selection, when so received and noted of record, will be forthwith forwarded to the Commissioner of the General Land Office for his action thereon. If publication shall be necessary under said paragraphs 23, 24, and 25, the selection will, after such publication is completed, be promptly forwarded to the Commissioner of the General Land Office for his action. The action of the register and receiver in receiving a selection and making notation of the same upon their records will not in itself operate to confer any right upon the selector, such as to prevent the subsequent rejection of the selection, where it is found that the selection as made was defective in any essential particular and for that reason should have been rejected.

UNPERFECTED BONA FIDE CLAIMS NOT COVERED BY PATENT CERTIFICATE

27. Where the land relinquished is covered by an unperfected bona fide claim, for which no certificate for patent is outstanding, there must be filed with the selection a certificate by the recorder of deeds or official custodian of the records of transfers of real estate in the proper county that no instrument purporting to convey or in any way encumber the title to the land, or any part thereof, is on file or of record in his office; or if any such instru-

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[g] See instructions of Oct. 19, 1929, p. 1149.

ment or instruments be on file or of record therein, the certificate must show the facts.

28. A selection in lieu of an unperfected claim not covered by patent certificate must in all respects conform to the law under which such unperfected claim is held, and will be subject to the payment of such fees and commissions as would be required under the statute to complete the unperfected claim in lieu of which the selection is made.

29. If the land relinquished is covered by an unperfected claim, such as a homestead or desert entry, to which certificate for patent has not issued, and the law under which the claim was initiated requires that land taken thereunder must be in one body, the same requirement must be observed in making the lieu selection.

30. A selection of land in lieu of an unperfected claim held under the settlement laws, if credit for residence on the unperfected claim be desired, must, in addition to other proofs, be accompanied by the affidavit of the selector, corroborated by two witnesses, showing when residence was established on the unperfected claim and the duration of such residence. In such a case, unless the selector has resided upon, cultivated, and improved the relinquished unperfected claim for the full period required by law to earn a patent thereto, he must establish and maintain a residence on the land selected, and cultivate and improve the same for the full period required by law to earn a patent, less the time spent upon the relinquished unperfected claim.

31. If the relinquished unperfected claim be not one held under the settlement laws, the affidavit as to residence required by the preceding paragraph need not be furnished; but in either case the selector must make affidavit that he has not sold, assigned, mortgaged, or contracted to sell the land covered by the relinquished unperfected claim.

32. In case a settler on an unsurveyed tract within a forest reserve desires to make a change of settlement to land outside of the reserve and receive credit for previous residence on the relinquished claim, he must file his selection in the same manner as provided with respect to selections in lieu of other unperfected claims, accompanied by the affidavit as to residence required in such cases, and should describe his unsurveyed claim with sufficient accuracy to enable the local land officers to approximately determine its location.

33. In making selections in lieu of relinquished unperfected bona fide claims, not covered by patent certificate, Form 4–634, or its equivalent, should be used; and every such selection must also be supported by affidavit the same as required by paragraph 21 of these instructions (Form 4–061*a*). In such selection special notice of the selection by publication or otherwise will not be required.

34. Selections in lieu of relinquished unperfected bona fide claims not covered by patent certificate, where the essential requisites shall have been fully complied with by selectors at the time of filing their selections, will be received and noted of record in the same manner and upon the same conditions as provided in paragraph 26 of these instructions, and will be forthwith forwarded

to the Commissioner of the General Land Office for his action thereon.

35. A strict observance of these instructions will be required.

All previous circulars or instructions in conflict herewith are hereby revoked.

Very respectfully,

BINGER HERMANN,
Commissioner.

Approved.

E. A. HITCHCOCK, *Secretary.*

(Forms omitted.)

[Reported, 33 L. D. 558]

INSTRUCTIONS UNDER ACT MARCH 3, 1905, REPEALING ACT OF JUNE 4, 1897, AND ACTS AMENDATORY THEREOF, ALLOWING SELECTIONS IN LIEU OF LANDS SITUATED IN FOREST RESERVES, AND DEFINING THE SCOPE OF THE PROVISIONS RELATING TO CONTRACTS ENTERED INTO BETWEEN THE SECRETARY OF THE INTERIOR, ETC., WITH DIRECTIONS THEREUNDER

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 16, 1905.[4]

Registers and Receivers, United States Land Offices.

GENTLEMEN: The text of the act of Congress approved March 3, 1905, entitled "An Act prohibiting the selection of timber lands in lieu of lands in forest reserves" (33 Stat. 1264), is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Acts of June fourth, eighteen hundred and ninety-seven, June sixth, nineteen hundred, and March third, nineteen hundred and one, are hereby repealed so far as they provide for the relinquishment, selection, and patenting of lands in lieu of tracts covered by an unperfected bona fide claim or patent within a forest reserve, but the validity of contracts entered into by the Secretary of the Interior prior to the passage of this Act shall not be impaired: *Provided,* That selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue therefor the same as though this Act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

From and after the date of the approval of said act there was no authority of law for the acceptance of relinquishments of lands within forest reserves, and the selection of other lands in lieu thereof under the acts of June 4, 1897 (30 Stat. 36), June 6, 1900 (31 Stat. 614), and March 3, 1901 (31 Stat. 1037), and no such selections should have been, or will hereafter be allowed, except as hereinafter specified.

In providing that "the validity of contracts entered into by the Secretary of the Interior prior to the passage of this act shall not be impaired" Congress referred to, recognized, and authorized the consummation of certain agreements entered into between the Secretary of the Interior and the owners of certain odd-numbered sections of land in the San Francisco Mountains and Grand Canyon Forest Reserves in Arizona, and the owners of certain lands, not therefore reserved but included by the President's proclamation of December 22, 1903, within the Santa Barbara Forest Reserve in California. Under this provision selections are still authorized to be made in satisfaction of tracts relinquished, or to be relinquished, as follows: First, of odd-numbered sections within the San Francisco Mountains Forest Reserve, Ariz., relinquished or to be relinquished to the United States, either by the Santa Fe Pacific Railroad Co., the Aztec Land & Cattle Co., the Saginaw & Manistee Lumber Co., William F. Baker, or Edward B. Perrin; second, of odd-numbered sections within the Grand Canyon Forest Reserve, Ariz., relinquished or to be relinquished to the United States by the Santa Fe Pacific Railroad Co., and third, lands of both even and odd numbered sections within the Santa Barbara Forest Reserve, Calif., as defined by the President's proclamation of December 22, 1903, but which were not included within the former Pine Mountain and Zaca Lake Forest Reserve nor within the former Santa Ynez Forest Reserve, and relinquished or to be relinquished to the United States by either the Santa Barbara Water Co. or Jed L. Washburn. Upon the presentation of such relinquishments, with applications to select lands in lieu thereof, in accordance with instructions of July 7, 1902 (31 L. D. 372), you will accept same if otherwise unobjectionable.

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[4] See Circular No. 869, p. 497.

Under the proviso to the act all selections under the acts of June 4, 1897, and June 6, 1900, supra, made prior to and pending for adjudication on March 3, 1905, may be perfected and patented as though the said act of March 3, 1905, had not been passed; and if in the adjudication of any selection then pending same should be held invalid for any reason not the fault of the party making same, it is provided that another selection for a like quantity of land may be made in lieu thereof. Should application be presented under this provision of law you will be careful to see that same is in strict compliance with the instructions of July 7, 1902 (31 L. D. 372), except that instead of the showing specified in section 22 of such instructions the selector will be required to file his affidavit setting out the facts as to the prior selection in lieu of the relinquished tract, including the date when and place where such selection was made, the description of the land selected, the General Land Office number of such selection, and the date when finally rejected and canceled, so that it may clearly appear therefrom that the original selection was pending and not finally adjudicated on March 3, 1905.

The repealing act makes no provision for cases where lands within forest reserves may have been reconveyed to the United States, but no selections made in lieu thereof, or where such selections, if made, were finally rejected and canceled prior to March 3, 1905. Except as to the exceptional cases first above specified there is now no provision of law authorizing selections in lieu of such relinquished tracts.

Very respectfully,

W. A. RICHARDS, *Commissioner.*

Approved.

E. A. HITCHCOCK, *Secretary.*

[Reported, 49 L. D. 383]

CIRCULAR NO. 869[5]

FOREST LIEU SELECTIONS—CERTAIN RIGHTS REVIVED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 30, 1922.

Registers and Receivers, United States Land Offices.

GENTLEMEN: 1. Your attention is invited to the act of Congress, approved September 22, 1922 (42 Stats. 1017), entitled "An act for the relief of certain persons, their heirs or assigns, who heretofore relinquished lands inside national forests to the United States," which provides as follows:

> That where any person or persons in good faith relinquished to the United States lands in a national forest as a basis for a lieu selection under the Act of June 4, 1897 (Thirtieth Statutes at Large, pages 11, 36), and failed to get their lieu selections of record prior to the passage of the Act of March 3, 1905 (Thirty-third Statutes at Large, page 1264), or whose lieu selections, though duly filed, are finally rejected, the Secretary of the Interior, with the approval of the Secretary of Agriculture, upon application of such person or persons, their heirs or assigns, is authorized to accept title to such of the base lands as are desirable for national-forest purposes, which lands shall thereupon become parts of the nearest national forest, and, in exchange therefor, may issue patent for not to exceed an equal value of national-forest land, unoccupied, surveyed, and non-mineral in character, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State. Where an exchange can not be agreed upon the Commissioner of the General Land Office is hereby authorized to relinquish and quitclaim to such person or persons, their heirs or assigns, all title to such lands which the respective relinquishments of such person or persons may have vested in the United States: *Provided*, That such person or persons, their heirs or assigns, shall within five years after the date of this Act, make satisfactory proof of the relinquishment of such lands to the United States by submitting to the Commissioner of the General Land Office an abstract of title to such lands showing relinquishment of the same to the United States, which abstract or abstracts shall be retained in the files of the General Land Office.
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> SEC. 2. That if it shall appear that any of the lands relinquished to the United States for the purpose stated in the preceding section have been disposed of or appropriated to a public use, other than the general purposes for which the forest reserve within the bounds of which they are situate was created, such lands shall not be relinquished and quit-claimed as provided therein, unless the head of the department having jurisdiction over the lands shall consent to such relinquishment; and if he shall fail to so consent, or if any of the lands so relinquished have been otherwise disposed of by the United States, other surveyed, non-mineral, unoccupied, unreserved public lands of approximately equal area and value may be selected and patented in lieu of the lands so appropriated or disposed of in the manner and subject to the terms and conditions prescribed by said Act of June 4, 1897, and the regulations issued thereunder: *Provided*, That applications to make such lieu selections must be filed in the General Land Office within three years after the date of this Act.

2. *Initial application to forest officers.*—All preliminary negotiations relating to an exchange under section 1 of the act are to be conducted with the local representatives of the Forest Service. Any person or persons who in good faith relinquished to the United

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[5] Amended by Circular No. 919, p. 503.

States lands in a national forest as a basis for a lieu selection under the act of June 4, 1897 (30 Stat. 36), and failed to get their lieu selections of record prior to the passage of the repealing act of March 3, 1905 (33 Stat. 1264), or whose selections, though duly filed, are finally rejected, or the heirs or assigns of such person or persons, and who desires to take advantage of the privileges conferred by section 1 of said act, must file with the local national-forest officers an informal application describing by Government subdivisions the land thus relinquished to the United States as well as the land desired to be selected. If timber is desired in exchange the land on which the timber is located must be described. The relinquishment of less than a legal subdivision will not be accepted, nor the selection of less than a legal subdivision approved. The selected land or timber must be entirely within national-forest boundaries, and where timber is applied for the land on which it is located must be in the same State as is the relinquished land.

The applicant must also show by affidavit, or other evidence satisfactory to the Forest Service, that, prior to March 3, 1905, he duly relinquished to the United States lands in a national forest as a basis for lieu selection under said act of June 4, 1897, and that he failed to get his lieu selection of record prior to the passage of said act of March 3, 1905, or that his selection, though duly filed, was finally rejected.

3. *Approval of the exchange.*—When a tentative agreement has been reached between the applicant and the local national-forest officer, the matter will be submitted to the district forester, and if approved by him will be forwarded to the Forester, Washington, D. C., for consideration.

If the Forester finds that the base lands are desirable for national-forest purposes; that the value of the base lands relinquished, and the selected lands, is equal; and that the lands selected are unoccupied, surveyed, and nonmineral in character, or the timber selected is equal in value to that land relinquished; that the selected land or timber is entirely within national-forest boundaries, and the lands on which the timber is located are in the same State as the relinquished lands, he will so report to the Secretary of Agriculture and will request that the Secretary of the Interior be advised that the acceptance of the title to the base lands offered under the act and the granting in lieu thereof of other described lands, or of stumpage upon other described lands, meets with the approval of the Department of Agriculture.

The Secretary of the Interior, upon receipt of such a letter from the Secretary of Agriculture, unless he has reasons to do otherwise, will approve the exchange, subject to the submission of acceptable title to the base land, and to full compliance by the applicant with these regulations, and subject to any protests or other valid objections which may appear, and will so advise the Commissioner of the General Land Office.

4. *Formal application to district land officers.*—The General Land Office will notify the district land officers of the district in which the land or timber to be selected is located, of the approval of the exchange, and such district land officers will in turn notify the person desiring to make such exchange of the approval thereof, and that

he is allowed 60 days from receipt of notice within which to file his formal application specifically describing the land selected, or the land on which timber selected is located, and the land to be relinquished. The application must be accompanied by the necessary affidavits, relinquishments or reconveyances, abstract of title, and fees.

No fixed forms of application for selection under this act and accompanying affidavits as to the relinquished and selected lands have been prepared, but these instructions should be followed as nearly as possible.

The proof papers necessary to complete a selection should be filed at the same time. However, if additional time is necessary to complete the abstract, the same will be granted upon a proper showing filed with the application to select.

5. *Affidavits required.*—The applicant will be required to show by affidavit that he is 21 years of age, and otherwise legally capable of carrying through the transaction; that he is the owner of the land relinquished, and that said land is not the basis of another selection or exchange. He must also furnish his own affidavit or the affidavit of some credible person possessed of the requisite personal knowledge, showing that the land selected is nonmineral in character; that it contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor; that it is not in any manner occupied or claimed adversely to the selector.

These affidavits may be executed before any officer qualified to administer oaths.

6. *Relinquishment or reconveyance.*—The original deed of relinquishment or reconveyance of the land tendered as a basis of exchange must have been executed and acknowledged in the same manner as a conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. The original deed, duly recorded, should be tendered or a certified copy of the deed, as recorded on the county records.

Where the relinquishment or reconveyance is made by an individual it must show whether the person relinquishing is married or single, and if married, the wife or husband of such person, as the case may be, should have joined in the execution of the relinquishment or reconveyance in such a manner as to effectually bar any right of courtesy or dower, or any claim whatsoever to the land relinquished, or it must be fully shown that under the laws of the State in which the relinquished land is situated such wife or husband has no interest whatsoever, present or prospective, which makes her or his joining in the relinquishment or reconveyance necessary.

Where the relinquishment or reconveyance is by a corporation, it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer and should bear the impression of the corporate seal.

7. *Abstract of title.*—Each relinquishment or reconveyance must be accompanied by a duly authenticated abstract of title, showing relinquishment of the base lands to the United States; that at the time the reconveyance was recorded the title was in the party mak-

ing the conveyance; that at the present time title is in the United States, and that the land is free from conflicting record claims, tax liabilities, judgment or mortgage liens, pending suits, or other encumbrances.

The certificate of authentication of the abstract must be signed by the recorder of deeds or other proper official, under his official seal, and must show that the title memoranda is a full, true, and complete abstract of all matters of record or on file in his office, including all conveyances, mortgages or other encumbrances, judgments against the various grantors, mechanics' liens, lis pendens, or other instruments which are required by law to be filed with the recording officers, affecting in any manner whatsoever the title to the described land. The authenticity of the tax records must be certified by the officers having custody thereof showing that all taxes levied or assessed against the land, or that could operate thereon as a lien, have been fully paid, or whether there is a tax lien although such tax is not assessed, due or payable, that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of his office. The absence of judgment liens or pending suits against the various grantors which might affect the title of the land relinquished or reconveyed must be shown by the official certificate of the clerks of the courts of record, whose judgments, under the laws of the United States or the State in which the land is situated, would be a lien on the land reconveyed or relinquished. If it is preferred the abstract may be authenticated by an abstractor or by an abstract company, approved by the General Land Office, in accordance with section 42 of the Mining Regulations of August 6, 1915[h] (44 L. D. 297), or Circular No. 726 of October 13, 1920.

8. *Applications for timber.*—If timber is desired in exchange for the land conveyed to the United States, proof that notice has been published and posted will be all the evidence necessary to be filed in regard to the timber, but all the proof required in connection with the land offered as a basis for the exchange must be filed.

9.[6] *Fees.*—Fees must be paid by the applicant at the time of filing his application in the local land office at the rate of $1 each to the register and receiver for each 160 acres or fraction thereof included in his application.

10. *Publication and posting.*—Within 30 days from the filing of his application to select land or timber the applicant will begin publication of notice thereof, at his own expense, in a newspaper or newspapers having general circulation in the county or counties in which the land or timber selected is situated, the newspapers to be designated by the register. Such notice must be published once each week for four successive weeks during which time a similar notice of the application must be posted in the local land office and upon each and every noncontiguous tract included in the application. The notice should describe the land or timber applied for as well as the land to be given in exchange and give the date of filing the application and state the purpose thereof is to allow all persons claiming the land selected or having bona fide objections to such application an oppor-

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[h] The mining regulations of Aug. 6, 1915, were revised Apr. 11, 1922. See par. 42, p. 819.

[6] Amended by Circular No. 919, p. 503.

tunity to file their protests with the local officers of the land district in which the land selected is situated.

Proof of publication shall consist of an affidavit of the publisher or of the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. Proof of posting upon the land and that such notices remained posted during the entire period required must be made by the applicant or some credible person having personal knowledge of the facts. The register shall certify to the posting in his office. The dates of such publication and posting must, in all cases, be given.

11. *Action by district land office.*—All applications sufficient in form, accompanied by the required proof and fees, will be accepted, and you will note on your records against the land "Selected under the act of September 22, 1922 (42 Stat. 1017), by ______ (date) ______ serial No. ______ pending." Such application will be given a serial number and have the hour and date of filing stamped thereon.

The register will certify the condition of the record on the application, and you will promptly transmit the original application and accompanying papers to this office by special letter as soon as evidence of publication and posting is furnished.

12. *Action by the General Land Office.*—The application and accompanying proof will, upon receipt by the General Land Office, be examined at as early a date as practicable and, if found defective, opportunity will be given the parties in interest to cure the defects, if possible. If the selection appears regular and in conformity with the law and these regulations, the selection will, in the absence of objections, if for land only, be formally approved for patent by letter to the district land office, a copy of such letter to be furnished the Forest Service, but if timber is taken in exchange the Secretary of Agriculture will, upon advice of the Secretary of the Interior that the regulations have been fully complied with, issue proper permit or certificate for timber.

13. *Relinquishment by the General Land Office.*—Where the applicant and the forest officers can not agree upon an exchange in accordance with section 1 of said act of September 22, 1922, and where the lands relinquished have not been disposed of by the United States or appropriated to a public use other than the general purposes for which the forest reserve within the bounds of which they are situated was created, upon due proof of that fact, to consist of the letters of the forest officers and the affidavit of the applicant, accompanied by the required abstract of title showing relinquishment of the lands to the United States, under the said act of June 4, 1897, the Commissioner of the General Land Office will, in proper cases, relinquish and quitclaim to the person or persons, who thus relinquished to the United States, their heirs or assigns, all title to such lands which the respective relinquishments of such person or persons may have vested in the United States. A copy of such relinquishment and quitclaim and the abstract of title will be filed in the General Land Office.

Applications for such relinquishments or quitclaims may be filed in the district land office, for transmission by special letter, or the applications may be filed direct in the General Land Office. Such applications will not be given a serial number.

14. *Rights of reselection granted in certain cases.*—Where it appears that an exchange can not be agreed upon, and that the lands relinquished to the United States under said act of June 4, 1897, have been disposed of by the United States or appropriated to a public use, other than the general purposes for which the forest reserve within the bounds of which they are situated was created, such lands will not be relinquished and quitclaimed unless the head of the department having jurisdiction over the lands shall consent thereto.

If such head of department shall fail so to consent, or if any of the lands so relinquished have been otherwise disposed of by the United States, the person or persons so relinquishing, their heirs or assigns, may select other surveyed, nonmineral, unoccupied, unreserved public lands of approximately equal area and value, and the same shall be patented in lieu of the lands so appropriated or disposed of, in the manner and subject to the terms and conditions prescribed by said act of June 4, 1897, and the regulations issued thereunder. The principal circular giving instructions under this act is that of July 7, 1902 (31 L. D. 372), but this was modified by a large number of subsequent circulars and decisions. Publication is required by the circular of February 21, 1908 (36 L. D. 278).[1]

After the right of selection under section 2 of the act of September 22, 1922, has been granted, a compliance with the regulations of this circular, found in paragraphs Nos. 4, 5, 6, 7, and 10 will probably be sufficient. Before the application can be approved, a field examination will be necessary to determine if the values are approximately equal.

15. *Statute of limitations.*—Applicants desiring to make lieu selections under section 1 of said act, or desiring a relinquishment or quitclaim where an exchange can not be agreed upon, are, under the proviso to said section 1 allowed five years from and after the date of the act within which to make satisfactory proof of the relinquishment of their lands to the United States under said act of June 4, 1897, by submitting to the Commissioner of the General Land Office an abstract of title showing relinquishment of the same to the United States.

Applications to make lieu selections under section 2 of the act must be filed in the General Land Office within three years after the date of the act.

16. *Lands to become part of national forest.*—Where title to lands is accepted under section 1 of the act, the lands relinquished shall thereupon become a part of the nearest national forest.

17. *Right reserved to reject any and all applications.*—Applications to select either land or timber under the provisions of the act will not defeat the right of the United States to withdraw or reserve the land for such purposes or uses as may be proper prior to the filing in the district land office of an application complete in all particulars.

18. *Practice and procedure.*—Notice of additional or further requirements, rejections, or other adverse actions of registers and receivers, the commissioner or the Secretary will be given and the right of appeal or rehearing recognized in the manner now prescribed by the Rules of Practice, except as otherwise herein provided. A pro-

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[1] See instructions of Oct. 19, 1929, p. 1149.

test or other objection against the selection or the application to select must be filed in the district land office to be forwarded to the General Land Office for consideration and disposal. Application to enter filed subsequent to any conflicting application to select will be rejected except where the subsequent application to enter is supported by allegations of prior right, in which event it will be transmitted to the General Land Office with appropriate recommendation. Applications presented under these regulations not in substantial conformity with the requirements herein made or not accompanied by the prescribed proof and fees, or where land offered as basis of exchange or the land selected is not situated within the boundaries prescribed by the act will be rejected, subject to appeal or curing of the defect where possible.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved December 30, 1922.

E. C. FINNEY,
Acting Secretary of the Interior.

I concur.

HENRY C. WALLACE,
Secretary of Agriculture.

[Reported, 50 L. D. 268]

CIRCULAR NO. 919

FEES FOR NATIONAL FOREST EXCHANGES—AMENDING CIRCULARS NOS. 863 AND 869

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 4, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Section 6 of the regulations contained in joint Circular No. 863, approved October 28, 1922,[j] for the administration of the act of March 20, 1922 (42 Stat. 465), and section 9 of the regulations contained in joint Circular No. 869, approved December 30, 1922, for the administration of the act of September 22, 1922 (42 Stat. 1017), are hereby amended to read as follows:

> *Fees.*—Fees must be paid by the applicant at the rate of $1 each to the register and receiver for each 160 acres, or fraction thereof, of the base lands surrendered and conveyed to the Government.

Very respectfully,

WILLIAM SPRY,
Commissioner General Land Office.

Approved February 4, 1924.

HUBERT WORK,
Secretary of the Interior.

HENRY C. WALLACE,
Secretary of Agriculture.

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[j] See Circular No. 863 dated Mar. 20, 1925, p. 480.

CIRCULAR NO. 978

SELECTIONS UNDER THE ACT OF JANUARY 6, 1925

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 11, 1925.

Registers and Receivers, United States Land Offices in Montana.

SIRS: The act (43 Stat. 722), approved January 6, 1925, and entitled " An act to extend relief to the claimants in township 16 north, ranges 32 and 33 east, Montana meridian, Montana," provides:

> That if by reason of the adjustment to the plat of resurvey of entries in Township 16 North of Ranges 32 and 33 East of the Montana Principal Meridian, Montana, entrymen or their assigns have heretofore acquired or may hereafter acquire patents to a less area than such entries when made were believed to contain, the Secretary of the Interior may, under such rules and regulations as he may prescribe, cause patents to issue to such entrymen or their assigns for such area of surveyed, unreserved, unappropriated, nonmineral public land in the State of Montana, not containing merchantable timber, as when added to the area to which the entries were adjusted will equal the area the entries were supposed to contain when made; *Provided*, that applications for such additional area shall be filed within six months from the date of the issuance of patent or within six months from the passage hereof if patent has already issued; *Provided further*, That patents for such additional area shall issue without further final proof and without payment of fees or commissions.

2. Within the townships named in the act are found entrymen occupying lands other than are described in their entries. Examination upon the ground made by a cadastral engineer employed by the General Land Office has developed that there are within these townships certain entries which are irrelated to the survey or which are actually in conflict with each other upon the ground. Following this examination it has been found necessary to make certain adjustments or amendments of these entries, and the act above quoted was intended to relieve those persons who lost a part of the area which they believed they were securing when they made their entries, by granting to them an amount of land equal to the area thus lost because of the adjustments.

3. Under the terms of the act, the indemnity may be selected anywhere in the State of Montana. It must be surveyed, unreserved, unappropriated, nonmineral public land, not containing merchantable timber.

4. A 40-acre tract which contains an excess of 25,000 feet of saw timber or its equivalent in poles, posts, or cordwood may not be selected under the act.

5. Selections of land in the townships named in the act may be made for less than a legal subdivision, if desired; otherwise must be for not less than a legal subdivision. If the subdivision selected contains a greater area than that to which the applicant is entitled, the difference must be paid for at the rate of $1.25 per acre.

6. The benefits of the act are limited to the persons in possession or vested with title to the adjusted entry at the time application is made hereunder.

7. If patent under the adjusted entry has been issued, application hereunder must be filed by the patentee or the transferee within six months from and after January 6, 1925. In other cases applications

must be filed within six months from the issuance of patent under the adjusted entry. If persons entitled to the benefits of the act are unable to file an application for a specific tract of land within the time allowed by the act, and an affidavit to that effect is filed, the time within which to file a proper or supplemental application may be enlarged to the extent of not to exceed six months.

8. If an application hereunder is made by the entryman of a perfected but still unpatented entry, it must be supported by a certificate of the county recorder to the effect that the land in the entry is not shown by his records to have been transferred.

9. Applications made by a patentee, by the transferee of a patentee, or by the transferee of a perfected but unpatented entry, must be accompanied by an abstract of title showing ownership in the applicant.

10. Where an entry within the townships named in the act has been patented for an area which conflicts on the ground with another entry or entries, and it is found essential to an equitable adjustment that such patented entry be amended to cover an area less than that described in the patent, the patentee or his assignee may apply for amendment of the entry and patent, and may, if he so desires, at the same time apply for a patent under the act for indemnity lands in the amount equal to the loss which the patented entry will sustain.

11. If applications are presented by the assignee of a patented entry, it must appear that the applicant has not been compensated by his grantor for the loss of area, and that he purchased the patented land on the basis of the area named in the patent.

12. No printed forms of application will be furnished. The application should make the showing prescribed by the foregoing paragraphs, but an extension of time to furnish an abstract of title, in cases where such abstract is required, will be granted on request.

13. Upon the filing of an application, you will assign a serial number thereto, and forward it by special letter, with report as to the status of the selected tract. No fee or commissions will be collected in connection with the application.

14. Publication must be made in a newspaper for a period of four successive weeks if published weekly, or for 30 successive days if published daily and notice must also be posted in your office for a like period.[k] You will follow the rules laid down for publication in homestead and other agricultural cases in determining which newspaper is to carry the notice. The notice may merely recite that the applicant, (naming him), has applied for a certain tract of land under the act here in question and that the notice is given for the purpose of enabling any one with adverse interests to enter protest. A date on which protest may be offered must be named in the notice.

Very respectfully,

William Spry, *Commissioner.*

Approved February 11, 1925.

E. C. Finney,
First Assistant Secretary.

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[k] See instructions of Oct. 19, 1929, p. 1149.

[Reported, 51 L. D. 51]

ABSTRACTS OF TITLE TO LANDS TENDERED AS BASE FOR LIEU SELECTIONS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, February 13, 1925.

FINNEY, *First Assistant Secretary:*

The department has considered your [Commissioner of the General Land Office] letter of the 8th instant requesting instructions as to whether the unreported departmental decision of July 12, 1923, involving three selections (Cheyenne 033257, 033259, 033260) under the exchange provisions of the act of June 4, 1897 (30 Stat. 11, 36), should be considered as overruling several reported decisions. You state that for more than 20 years last past it has been the practice of your office to require applicants for lieu selections under the acts of June 4, 1897, supra, June 6, 1900 (31 Stat. 588, 614), and March 3, 1905 (33 Stat. 1264), to bring their abstracts of title to the lands tendered as base up to the date of their selections, except where the base lands are situated in the State of Arizona, the theory being—

> that the recording of a deed purporting to convey lands to the United States and tender thereof to this department constitute a mere assertion by the applicant of his title to the land and his right to make selection, and that no equitable right to the land vests in the United States until the title has been examined, approved, and accepted.

In support of the theory on which your office has proceeded you cite a paragraph from the case of C. W. Clarke (32 L. D. 233), wherein it was stated that it is a necessary deduction from the decision of the Supreme Court in Cosmos Exploration Company *v.* Gray Eagle Oil Company (190 U. S. 301), that all equitable right of property in the land relinquished remains in the proponent until the title is examined, approved, and accepted.

The reported decisions referred to by you are the cases of C. W. Clarke, supra, Thomas F. Arundell (33 L. D. 76), Mary E. Coffin (34 L. D. 564), and A. G. Strain (40 L. D. 108).

The decision of July 12, 1923, was rendered on a petition for the exercise of supervisory authority filed by the selector after your office had required him to furnish a supplemental abstract of title of the base land in each case. The three selections were filed January 2, 1923. The base land was deeded to the United States more than 20 years prior to the date of the selections, and the abstracts of title were brought down to May 20, 1922, October 21, 1922, and October 23, 1922, respectively, approximately the date of the selections. It was because thereof that the department vacated your requirement, holding—

> The base lands having been conveyed to the United States on the dates named, no subsequent act of the prior holder of the title or of any other person could invalidate the title thus acquired. * * *

It is apparent that the decision of July 12, 1923, did not overrule any prior decision, reported or unreported, but merely relieved the selector from a useless expense and unnecessary delay.

The act of June 4, 1897, supra, was repealed by the act of March 3, 1905 (33 Stat. 1264). Prior to the approval of the latter act, large areas within forest reserves had been relinquished to the United States, with the intention of taking advantage of the exchange provisions of the act of 1897. Many selections based on such reconveyances were pending, and the repeal act of 1905 provided—

> That selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue therefor the same as though this act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

The act of September 22, 1922 (42 Stat. 1017), provides—

> That where any person or persons in good faith relinquished to the United States lands in a national forest as a basis for a lieu selection under the Act of June 4, 1897 (Thirtieth Statutes at Large, pages 11, 36), and failed to get their lieu selections of record prior to the passage of the Act of March 3, 1905 (Thirty-third Statutes at Large, page 1264), or whose lieu selections, though duly filed, are finally rejected, the Secretary of the Interior, with the approval of the Secretary of Agriculture, upon application of such person or persons, their heirs or assigns, is authorized to accept title to such of the base lands as are desirable for national-forest purposes, which lands shall thereupon become parts of the nearest national forest, and, in exchange therefor, may issue patent for not to exceed an equal value of national-forest land, unoccupied, surveyed, and nonmineral in character, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State. Where an exchange can not be agreed upon the Commissioner of the General Land Office is hereby authorized to relinquish and quitclaim to such person or persons, their heirs or assigns, all title to such lands which the respective relinquishments of such person or persons may have vested in the United States: *Provided,* That such person or persons, their heirs or assigns, shall, within five years after the date of this Act, make satisfactory proof of the relinquishment of such lands to the United States by submitting to the Commissioner of the General Land Office an abstract of title to such lands showing relinquishment of the same to the United States, which abstract or abstracts shall be retained in the files of the General Land Office.
>
> SEC. 2. That if it shall appear that any of the lands relinquished to the United States for the purpose stated in the preceding section have been disposed of or appropriated to a public use, other than the general purposes for which the forest reserve within the bounds of which they are situate was created, such lands shall not be relinquished and quitclaimed as provided therein, unless the head of the department having jurisdiction over the lands shall consent to such relinquishment; and if he shall fail to so consent, or if any of the lands so relinquished have been otherwise disposed of by the United States, other surveyed, nonmineral, unoccupied, unreserved public lands of approximately equal area and value may be selected and patented in lieu of the lands so appropriated or disposed of in the manner and subject to the terms and conditions prescribed by said Act of June 4, 1897, and the regulations issued thereunder: *Provided,* That applications to make such lieu selections must be filed in the General Land Office within three years after the date of this Act.

The act last above quoted is clearly based on the theory that the deeds of reconveyance recorded prior to March 3, 1905, vested title in the United States, even though a selection based thereon had not been filed. However, it is now well established—notwithstanding some prior decisions of the department to the contrary—that upon the approval of selections the title of the base land relates back to the date the deed of conveyance to the United States was recorded. This was the purport of the decision of the Supreme Court of the State of Oregon in a suit to vacate various conveyances of school land made by officers of the State.

In view of the foregoing, unless it appears that your office has at some prior date formally disclaimed title to the land tendered as base, it is unnecessary to require a supplemental abstract brought down to the date of the selection if the abstract on file shows that at the date the deed of conveyance was recorded there were no adverse claims. All prior decisions of the department to the contrary are hereby overruled.

[Reported, 51 L. D. 516]

Circular No. 1088

RELIEF OF SETTLERS AND ENTRYMEN ON BACA FLOAT NO 3—EXTENSION OF TIME

Department of the Interior,
General Land Office,
Washington, August 2, 1926.

Register, *Phoenix, Ariz.*

Sir: The act of Congress approved April 17, 1926 (44 Stat. 299), extended for two years from the date of said act, the period for making selections and entries under the provisions of the act of July 5, 1921 (42 Stat. 107). The act of July 5, 1921, reads as follows:

> That where, prior to December 13, 1917, patents or patent certificates have issued under the homestead laws or preemption laws for land within the limits of a tract known as Baca Float Numbered Three, in the State of Arizona, and the patentees, their assigns, and legal representatives have been evicted by the local courts by reason of the prior grant to the legal representative of Luis Maria Baca, the patentee, his assigns or his legal representative, who under the laws and regulations would have been entitled to the return of the purchase money, fees, and commissions, shall be entitled to select in lieu thereof not exceeding twice the area of the lands lost, of any nonmineral unoccupied surveyed public lands in the State of Arizona subject to homestead entry.
>
> Sec. 2. That where any person had made homestead entry for land within Baca Float Numbered Three, and had fully complied with the homestead laws thereon as to residence and cultivation prior to June 22, 1914, in the bona fide belief that the land was public land, and has been evicted therefrom or prevented from making final entry by reason of the prior grant, said homestead entryman, or, in the case of his or her death, the successor to the right of entry under the homestead laws shall be permitted to make second homestead entry for other land situated in the State of Arizona and not exceeding twice the area of the original homestead entry lost as herein set forth, subject to the conditions, limitations, and benefits of the homestead laws applicable to such land; and upon submission of proof under his original entry that he had fully complied with the law as to residence and cultivation, shall on approval of such proof and payment at the office of second entry for the final fees and commissions due on a final entry for the land entered, receive a final certificate and patent without further residence and cultivation of the land embraced in the second entry.
>
> Sec. 3. That the right of selection and second entry hereby granted shall not be assignable, directly or through irrevocable power of attorney, and must be exercised within three years after the passage of this act by the persons entitled to such relief, or, in the case of the death of a homestead entryman who has not submitted final proof and received his final certificate, by the person or persons succeeding to his right of entry under the homestead laws: *Provided*, That no persons acquiring said land by sale or conveyance subsequent to December 13, 1917, shall be recognized, and the applicant shall submit proof that he has not sold, assigned, nor relinquished his homestead nor entered into any contract or agreement to sell, assign, or relinquish the same, nor abandoned the land for a valuable consideration; also that the land sought to be selected is for applicant's own exclusive use and benefit, and that he has not sold or contracted to sell, directly or indirectly, said selected

land; *And provided further*, That the entire right of reselection under each entry shall be exercised at the same time, under such rules and regulations as the Secretary of the Interior may prescribe, and on approval of the selection patent shall issue as on other entries.

SELECTIONS UNDER SECTION 1

Selections under section 1 of the act may be made by persons, their heirs or legal representatives, to whom patents or patent certificates issued under homestead or preemption laws for lands within the limits of the tract known as Baca Float No. 3, in the State of Arizona. The right is conditional upon the issuance of patents or final certificates, as well as eviction by the local courts by reason of the prior grant to the legal representative of Luis Maria Baca, prior to December 13, 1917.

The selector must surrender the patent or final certificate, or submit proof of its loss. He must show whether or not he has sold or conveyed the land; if conveyance of the land has been made he must show that he has indemnified his assignee, or perfected title in him through other sources, or produce a full reconveyance to himself from the last assignee. He must furnish evidence that he has been evicted by a local court.

Assignees must furnish abstracts of title, or certificates of title, setting forth clearly their interest in the land patented.

Mortgagees are not assignees within the meaning of the repayment laws, but may become such under the act of July 5, 1921, by foreclosure or deed from the mortgagor.

Where a patentee or a person to whom a final certificate issued, or his assignee, died after entry, his executor or devisee, or, if he died intestate, the person or persons succeeding to his interest in the land under the laws of Arizona, may make the selection.

Where the person evicted and entitled to make a lieu selection, had died since his eviction, his heirs or legal representatives may make the selection.

SECOND HOMESTEAD ENTRIES UNDER SECTION 2

Section 2 authorizes second homestead entries by any person who made a homestead entry for land within Baca Float No. 3, and fully complied with the homestead laws as to residence and cultivation prior to June 22, 1914, and has been evicted from the land or prevented from making final entry by reason of the prior grant.

In case of death, the successor to the entryman under the homestead laws succeeds to the right of second entry.

The homestead entryman is required, before patent issues, to submit evidence, corroborated by two witnesses, showing that the homestead laws had been fully complied with prior to June 22, 1914, as to residence and cultivation with respect to the land covered by the original entry. No testimony need be submitted of such compliance with respect to the lieu land selected.

PROVISIONS APPLICABLE TO BOTH SECTIONS

The area covered by a selection or second homestead entry authorized by the act shall not exceed twice the area of the land lost, and shall embrace nonmineral unoccupied surveyed public land in the State of Arizona subject to homestead entry.

The applicant's entire right of selection or second entry must be exercised at the same time.

Each applicant must submit his affidavit that he has not sold, assigned, nor relinquished the land in lieu of which the selection or entry is made, and that he has not entered into any contract or agreement to sell, assign, or relinquish the same, nor abandoned the land for a valuable consideration; also, that the land selected or entered in lieu thereof is for the applicant's own exclusive use and benefit, and that he has not sold, nor contracted to sell, directly or indirectly, the selected land.

Applicants must furnish the regular nonsaline and nonmineral affidavit, nonoccupancy affidavit, and an affidavit that no spring or waterhole exists on the selected land or on the land covered by the second entry.

The regular proof of publication and posting for 30 days must be furnished.[1] The notice of a selection under section 1 must describe the land selected. In the case of a second entry under section 2 the notice must describe the land covered by the original entry as well as the land selected in lieu thereof.

No fee or commissions are required under section 1 of the act, but persons who make second homestead entry under section 2 of the act will be required to pay the fee and commissions due on a final entry for the land originally entered.

Very respectfully,

William Spry, *Commissioner.*

Approved August 2, 1926.

John H. Edwards, *Assistant Secretary.*

ISSUANCE OF DISCLAIMERS OF TITLE

Department of the Interior.
Washington, January 4, 1928.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: The department has considered your letter ("K" LHD) of November 11, 1927, requesting instructions as to whether you should resume the practice which prevailed prior to September 22, 1922, of issuing disclaimers to lands conveyed to the United States under the exchange provisions of the act of June 4, 1897 (30 Stat. 36), in those cases where the selection has been canceled.

With your letter you forwarded an application (1274794–1910) filed on October 3, 1927, by the Standard Investment Co., of Oakland, Calif., for a quitclaim deed for 966.01 acres in California. You later informally submitted a like application (1275301–1910) filed by the same company on October 5, 1927, as to 23.85 acres in Washington.

Only 166.01 acres (described in the first application) are now within a national forest, and the Secretary of Agriculture has advised this department that no objection will be made as to the issuance of a quitclaim deed.

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[1] See instructions of Oct. 19, 1929, p. 1149.

Abstracts of title have been filed by said company, showing good title in it except such title as may have been acquired by the United States through the deeds of conveyance.

The department has advised the applicant company that the Congress will be requested to authorize you to quitclaim the land to it.

It is presumed that almost everybody interested has taken advantage of the provisions of the act of September 22, 1922 (42 Stat. 1017). It is apparent that the Standard Investment Co. believed it was applying within the time allowed, its applications referring to "the act of December 30, 1922," which date is that of the regulations (49 L. D. 383).

It was because many examiners of abstracts of title attached no value to disclaimers of interest executed by your office that the department recommended the legislation which became the act of September 22, 1922, *supra.*

If other applications for quitclaim deeds are filed, you will submit them to the department with your recommendations. Disclaimers of interest should not be issued.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

[Reported, Copp's P. L. L. 806, 1875 ed.]

INSTRUCTIONS FOR LOCATING VALENTINE SCRIP

Department of the Interior,
General Land Office,
June 17, 1874.

To Registers and Receivers of United States Land Offices.

Gentlemen: In receiving applications to file, or locate, scrip issued by this office to Thomas B. Valentine, under the act of April 5, 1872 (17 Stat. 649), you will be governed by the following instructions:

First. You will observe that, by the terms of the said act, and by the face of the scrip itself, that scrip is applicable to any "unoccupied and unappropriated public lands of the United States not mineral."

Second. The scrip may be located by the said Thomas B. Valentine or his legal assignees.

Third. The scrip is in 40-acre pieces, and is required to be located in the same manner as are military bounty land warrants, viz: Each piece must apply to a separate 40-acre subdivision, be accompanied by a separate application, and receive a separate register's and receiver's number.

Fourth. When an immaterial excess of area occurs in the subdivision sought to be located, the applicant will be required to pay for such excess in cash, at the Government price per acre, and the receiver will issue an excess receipt therefor, and account for the same as in similar cases of military bounty land locations. The register, in such cases will append to the application his official statement, in red ink, that —— acres, (the excess), of said tract have been paid for, per receiver's receipt No. —.

Fifth. When application is made to file the said scrip upon unsurveyed land, a description by metes and bounds, together with a map or diagram of the tract applied for must be filed with the application. In such cases, the scrip, with the accompanying papers as aforesaid, will be retained in the careful custody of the receiver until such time as the township embracing the tract applied for shall be surveyed. Within three months from the date of the receipt by the register of the official plat of survey of the said township, the party who may have filed the said scrip will be required to appear before you and designate upon the official plat the specific subdivision embraced in the said filing, whereupon the location thereof will be consummated; and thereafter all the papers in the case will be transmitted to this office with your regular monthly returns. Should the applicant fail to so appear within the specified three months, you will immediately thereafter proceed to adjust the filing yourselves, as nearly as may be practicable, by the map and description filed by the party, and forward the same to this office as aforesaid. If you are unable to determine the locality of the land in the public surveys, you will report the fact, forwarding therewith all the papers in the case for my action. After a piece of the said scrip shall have been filed upon an unsurveyed tract, you will in no event allow the party to amend the description or diagram, or to reclaim the scrip, without express instructions from this office.

Sixth. The records of your proceedings in locating the said scrip, and your official returns of the same, are to be kept entirely separate and distinct from other sales, entries, and locations of public lands. At the close of each month you will make a separate official return of the scrip located during that month, with all the papers on file connected with such location, accompanied by a monthly abstract, as in the case of military warrant locations. You will also, at the end of each month, report, in an abstract similar to those used in cases of preemption filings, the numbers of such scrip as may have been filed during that month upon unsurveyed lands, together with the names of the parties filing the same, and the precise date of filing each piece.

Seventh. The fees of the register and receiver for the filing and location of the said scrip will be 50 cents to each officer on each piece of scrip filed, and the same amount on each piece located.

Eighth. The applications, certificates, and abstracts provided for military bounty land-warrant locations will be used for this scrip, care being taken to first correct, in writing, the style and title and date of act governing the same. For reports of filings of the same, the abstracts provided for declaratory statements under the preemption laws will be used, with the necessary corrections in writing.

Respectfully,

W. W. Curtis, *Acting Commissioner.*

Department of the Interior, *June 26, 1874.*

Approved.

C. Delano, *Secretary.*

(Forms omitted.)

[Reported, 5 C. L. O. 126; 2 Copp's P. L. L. 1355, 1882 ed.]

CIRCULAR RESPECTING THE LOCATION OF DACOTAH OR SIOUX HALF-BREED SCRIP, UNDER ACT OF CONGRESS APPROVED JULY 17, 1854 (U. S. STAT. AT LARGE, VOL. 10, PAGE 304)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 28, 1878.

Registers and receivers, United States District Land Offices.

GENTLEMEN: For the guidance of local officers and persons desiring to locate Dacotah or Sioux Half-breed Scrip, issued under the act of Congress approved July 17, 1854, this circular, amendatory of the circulars dated February 22, 1864, and January 29, 1872, is issued.

By the act of Congress referred to, the President was authorized to exchange with certain half-breeds or mixed-bloods of the Dacotah or Sioux Nation of Indians for a tract of land in Minnesota (which was set apart and granted for their use by the ninth article of the treaty of July 15, 1830), certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of such tract of land pro rata among them.

In accordance therewith the certificates or scrip were issued as follows: 2 for 40 acres each; 1 for 80 acres; and 2 for 160 acres each; being an aggregate of 5 pieces of scrip representing 480 acres to each half-breed.

These pieces were designated thus, for example, in the first case: No. 1, A—40 acres; No. 1, B—40 acres; No. 1, C—80 acres; No. 1, D—160 acres; No. 1, E—160 acres.

By the terms of the statute, and as is declared upon the face of each piece, the certificates or scrip are locatable upon the following described classes of lands:

I. Upon lands within the limits of the reservation aforesaid, situated in townships 108 to 110 north of ranges 9 to 15 West, Minnesota.

Under this class the locations can be made—

First. By the half-breed upon any land upon which he was an actual bona fide settler, at the date of the approval of said act of July 17, 1854.

To constitute a half-breed or mixed-blood an actual bona fide settler within the meaning of the statute, it must be shown, by proof satisfactory to you, that he was an occupant by personal inhabitation within said reservation at or before the passage of the act of July 17, 1854, and in such case he will be entitled to locate his scrip, embracing his improvements, conforming to the legal subdivisions of the public surveys, unless such location interferes with another bona fide settler, when each will be allowed to take such subdivisions as will embrace his improvements.

Second. Upon any land which, at the date of said act, was not so occupied by a half-breed, or any other person who may have gone into said reservation under the authority of law.

The persons who have "gone into said Territory by authority of law" are, as the land officers in Minnesota will understand, only such white persons as, prior to the passage of said act of July 17, 1854, had entered said reservation under the Indian intercourse laws—such as licensed traders, authorized missionary teachers, and other persons in the employ of Government in connection with Indian affairs, and who inhabited the lands and made improvements thereon prior to said act. Beside these special stipulations in the law in regard to locations in the reservation, the statute authorizes the location of the scrip:

II. "Upon any other unoccupied lands subject to preemption or private sale."

Under this clause no mineral or reserved lands can be taken, nor can it be located upon any lands on which there is an actual settlement by an adverse claimant, but it may be located on lands held at $2.50 as well as minimum lands; and

III. "Upon any other unsurveyed lands not reserved by Government, upon which they have respectively made improvements."

Where the half-breed may make actual settlement, his improvements will be notice on the ground to any other settler, and in this respect he will stand on the same basis as a preemptor on unsurveyed land, and of course can not adjust his location until after the return of the township plat to the district land office. Within three months after the filing of the township plat of survey he should repair to such land office, file his scrip with his affidavit, designating specifically, in compact legal subdivisions, the tracts embracing his improvements, and should state in his affidavit the character and extent of these improvements, and file testimony of competent witnesses corroborative of his statement.

With the view to protect fully the Government interests and to carry out the law in its meaning, you are directed to see that the following requirements are strictly complied with, where application is made to file said scrip for unsurveyed lands:

First. That the application must be accompanied with the affidavit of the Indian, or other evidence that the land contains improvements made by or under the personal supervision or direction of said Indian, giving a detailed description of said improvements, and that they are for his personal use and benefit; in other words, you should be satisfied that the Indian has a direct connection with the land, and is claiming the same for his personal use. Unless such evidence is filed, you will reject the application.

Second. The filing of the scrip must be considered in the character of a location, and should such filing not be followed within the time prescribed by our circular of February 22, 1864, relating to the location of this scrip, by an adjustment to the official plat of survey, you will, immediately thereafter, adjust the same yourselves, as near as may be practicable, from the map and description filed by the party, and forward the same to this office with regular abstract and reference to your action; or, if you are unable to determine the locality of the land in the public surveys, you will report the fact, forwarding therewith all the papers in the case, for the action of this office.

The land selected in satisfaction of a certificate of scrip must of course be located in the name of the party in whose favor the scrip is issued, and the location may be made by him or her in person, or by his or her guardian or duly authorized agent. The application should be duly attested in each case by the register and receiver, and attached to each should be your certificate to the following effect:

LAND OFFICE AT ——— ———,
——— ———, *18*—.

We hereby certify that the within scrip has, this ——— day of ———, been located on the ——— containing ——— acres, agreeably to the act of July 17, 1854, and by the party duly authorized to make the location.

Attest:

——— ———, *Register*.
——— ———, *Receiver*.

No receipt is to be issued to the locator, except in unavoidable cases, where there may be a small excess in the area of the location over the scrip, and in that case it must be paid for, and the receiver will issue his receipt, which he will number and account for, as in the case of bounty-land warrant excess. But no certificate of purchase is to be issued; the scrip and application, instead of certificates of purchase, being the instruments of title, which are to be returned to this office in this class of business.

The register, however, in the case of excess payments, will append to the application his official statement that ——— acres of said tract, (the excess), have been paid for, per receiver's receipt No. ———.

Your proceedings in locating the certificates, and your official returns, are to be kept entirely separate and distinct from other sales and locations. At the close of each month you will make a separate official return of scrip located, with all the papers on file connected with each location, accompanied by a monthly abstract; and in an addendum to such regular abstract you will report the number and name of scrip filed during the month for unsurveyed lands, retaining the scrip and papers on file for future adjustment.

You will notify all who may apply either to adjust claims now pending or to present new claims of the requirement herein.

You will observe that this scrip is not assignable, transfers of the same being held void; consequently each certificate, as hereinbefore stated, can only be located in the name of the half-breed, and such certificates or scrip are not to be treated as money, but located acre for acre.

No fees or commissions of any kind are allowed by this office for services of the land officers in this matter, such being an incident to their general duties; and you are therefore hereby interdicted from charging or receiving any compensation for such services. This scrip is, of course, not applicable to any class of Indian trust lands, but only to unreserved, unincumbered public lands.

Very respectfully,

J. A. WILLIAMSON, *Commissioner*.

Approved.

C. SCHURZ, *Secretary of the Interior*.

[Reported, 2 Copp's P. L. L. 992, 1882 ed.]

SUPREME COURT AND SURVEYOR GENERAL SCRIP

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, *February 13*, *1879*.

The act of Congress approved June 22, 1860, entitled "An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes" (Statutes, vol. 12, p. 85), provides, in its sixth section:

> That whenever it shall appear that lands claimed, and the title to which may be confirmed under the provisions of this act, have been sold in whole or in part by the United States prior to such confirmation, or where the surveyor-general of the district shall ascertain that the same can not be surveyed and located, the party in whose favor the title is confirmed shall have the right to enter, upon any of the public lands of the United States, a quantity of land equal in extent to that sold by the government: *Provided*, That said entry be made only on lands subject to private entry at one dollar and twenty-five cents per acre, and as far as may be possible in legal divisions and subdivisions, according to the surveys made by the United States.

The provisions of said act were extended and supplemented by the acts of March 2, 1867, and June 10, 1872, and they have been further supplemented by the act of January 28, 1879, entitled "An act defining the manner in which certain land scrip may be assigned and located, or applied by actual settlers, and providing for the issue of patents in the name of the locator or his legal representatives," a copy of which is hereto attached.

In pursuance of the provisions of these acts, scrip has been issued by this office, the several certificates of which, representing various quantities of land, according to the circumstances of the respective cases, may be located in legal subdivisions on any public land in your district subject to sale at private entry at $1.25 per acre, any small excess in such subdivisions over the area called for in the scrip to be paid for in money; or they may, under the second section of the act of January 28, 1879, be received from actual settlers in payment of pre-emption claims, or in commutation of homestead claims, even where the same embrace lands subject to entry at the double minimum price of $2.50 per acre, in the same manner and to the same extent as is now authorized by law in the case of military bounty land warrants. But the law authorizes no fees to be collected by the district land officers on account of locations made with this scrip.

When such scrip is presented in payment of a preemption claim composed of lands subject to entry at $2.50 per acre, the preemptor, in addition to the scrip surrendered, will be required to pay in cash the difference between the value of said scrip at $1.25 per acre, and that of the tract embraced in his claim; or to surrender additional scrip; thus 160 acres of double-minimum land may be paid for by the surrender of one piece of scrip for 160 acres, and the payment of $200, or by the surrender of two pieces of scrip for 160 acres each, or one piece for 320 acres. If the value of the scrip should exceed that of the lands entered therewith, the preemptor will receive no repayment thereof from the United States; but if the land, at its rated price, should exceed the scrip in value, such excess must be paid by the locator with cash. It will be required also, in the location of a tract subject to entry at a greater minimum than $1.25 per acre, that each piece of scrip shall be located upon a specific subdivision thereof, and that the excess in area of the land, if any, shall be paid for in cash. The same rules will govern in commutations of homestead claims.

You will in every case require the party desiring to locate to surrender the scrip and make application according to attached Form A;

when, if no objection should appear, you will allow the location to be made, properly fill up the heading of the application by inserting the number of the certificate of location, the register and receiver's number, the date of the decree, and the claim for which the certificate of location was issued, for which blanks are left in the form.

You will then issue a certificate of entry in duplicate according to Form B annexed, one of which you will deliver to the party, to be held by him as his evidence of title until the patent shall be issued.

The locations allowed, you will enter the same on your records, and at the expiration of the month will send up an abstract of all locations allowed during the same (Form C annexed). You will forward therewith the applications received, certificates of entry issued during the month, and also the scrip surrendered. Patents will be issued thereupon in regular course, as provided for in the third section of the act of January 28, 1879.

By the first section of that act it is declared that this scrip is "assignable by deed or instrument of writing according to the form and pursuant to regulations prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owners of the scrip." With regard to such form and regulations, the following is prescribed:

Entries with this scrip must be made by the confirmee or confirmees named in the scrip, or his or their duly authorized attorney, in the name of such confirmee or confirmees, or by the assignee or assignees of such confirmee or confirmees, or his or their duly authorized attorney, in the name of such assignee or assignees.

Each assignment must be attested by one or more subscribing witnesses; the mark of a witness will not be respected. Parties in interest as assignees are not recognized as legal attesting witnesses to an assignment, neither can an officer take an acknowledgment of an assignment to himself.

The execution of assignments is required to be acknowledged by the assignor, in the presence of a register or receiver of a land office, a judge or clerk of a court of record when authorized to take acknowledgments, a notary public, justice of the peace, a commissioner of deeds resident in the State from which he derives his appointment, or a commissioner of a circuit court of the United States, who shall certify to the fact of the acknowledgment and to the identity of the assignor, and the official seal of said court, notary public or commissioner, shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace or other officer without an official seal (except a register or receiver of a land office), it must be accompanied by an additional certificate, under seal of the proper authority, establishing the official character of the person before whom the acknowledgment was made, and the genuineness of his signature.

Powers of attorney must be acknowledged in like manner.

Assignments executed by unmarried females must be accompanied by evidence that they have attained the age of 21 years; and when married women assign, their husbands must unite with them in making the transfer.

When assignments are executed by a commissioner or other designated person, alleged to be acting under a decree of court, there must be procured and filed in this office a duly certified copy of such decree, in which all the proceedings had in the case should be recited, and from which it must appear that due notice of the pending suit had been given, by publication or otherwise, to all the parties interested.

When the assignment of this scrip is executed in a foreign country, and the acknowledgment thereof taken by an officer authorized by the laws thereof to perform such duties, the attestation of the American consul in such country should be obtained as to the official character and genuineness of the signature of the person before whom the acknowledgment of the said assignment was made, or if the official character, etc., of such foreign magistrate, is attested by a consular agent of such foreign government residing in this country, his official character must be certified by the diplomatic representative of such government in the United States.

When such assignments are executed in a foreign language, duly authenticated translations thereof must be furnished. Secretaries of legation and consular officers of the United States are authorized to take acknowledgments, but they must certify the same under their official seals.

When the persons named as confirmees are described in the scrip as being minors, their assignment thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

When an assignment has been executed and witnessed but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings in the case must be filed in this office. When, however, such assignment has not been properly attested, it must be made anew.

For general forms of assignment, and of powers of attorney and acknowledgment, see Forms D, E, F, G, H, I, K, L, M, N, O, P. In cases where the assignments, powers, or acknowledgments are written or printed and signed on the back of the certificate, the words, " the within certificate " may be used instead of the full description of such certificate provided for in these forms.

It will not be practicable in all cases to attach the assignment or power of attorney to each certificate of location, and it will not be required by this office.

When a single assignment or power of attorney covers a number of certificates, such assignment or power may be filed in this office, and will be referred to to perfect the assignment of any of the certificates named therein, whenever they or either of them shall have been located and returned to this office for patenting. Such assignment or power thus filed will also be referred to by this office for the purpose of attaching to any certificate of location named therein, a certificate (Form Q), relative to the validity of the certificate of location and the assignment thereof.

Upon the application of any assignee of this scrip, accompanied by the scrip and papers in his possession relative to the assignment thereof, this office will examine said scrip and assignments, and such assignments thereof as are found on the files of this office; and if the scrip be found free from objections, and the assignments sufficient in form, a certificate of approval of such scrip and the assignments thereof (Form Q), will be attached by this office to the scrip thus submitted.

Each piece of scrip thus transmitted to this office must be accompanied by the sum of $1, the legal fee for a certificate of verification.

The fourth section of the act of January 28, 1879, declares that its provisions respecting the assignment and patenting of scrip and its application to preemption and homestead claims shall apply to the indemnity certificates of location provided for in the act of June 2, 1858, entitled "An act to provide for the location of certain confirmed private-land claims in the State of Missouri," and for other purposes. The general principles hereinbefore laid down with regard to scrip issued under the act of June 22, 1860, are applicable to the class of certificates issued under the act of June 2, 1858, and you will be governed thereby in dealing with any of the latter presented for location. The same forms may be used, with such verbal alterations in them as may be necessary to adapt them to the case in hand. You will take care, however, in making returns for these two classes of locations, to keep them separate and distinct.

J. A. Williamson, *Commissioner.*

(Forms omitted.)

ABSENTEE WYANDOTTE INDIANS ENTITLED TO SELECTIONS—RULES GOVERNING APPLICATIONS

Department of the Interior,
General Land Office,
Washington, D. C., October 28, 1904.

Registers and Receivers, United States Land Offices.

Sirs: The act of April 28, 1904 (33 Stat. 519), provides, among other things:

> That each living adult Absentee Wyandotte Indian, whose name appears upon a census roll of Wyandotte Indians made by Special Agent Joel T. Olive, as approved by the Secretary of the Interior December seventh, eighteen hundred and ninety-six, may select in person, under such rules and regulations as the Secretary of the Interior may prescribe, from the surveyed public nonmineral domain, eighty acres of agricultural land wherever there may be such lands subject to entry; and the heirs of any deceased Absentee Wyandotte Indian so enrolled may in like manner select a like quantity of land in the name of their deceased ancestor, and the natural or legal guardian of any minor Absentee Wyandotte so enrolled may in like manner select eighty acres of agricultural land for his ward.

On the presentation of an application, under oath, to select not more than 80 acres unappropriated, surveyed agricultural public land, under the provisions of this act, signed by one of the Indians whose names appear on the census roll of the absentee Wyandotte Indians, a list of which names is hereto attached, with a proper nonmineral affidavit, sworn to by some person familiar with the land applied for, you will, after certification by the register as to the character of the land, place the same on record, and forward, with proper abstract, with your regular monthly returns.

The personal selection required is construed to mean that the application must be made for and signed by one of the persons named on the roll, but does not require personal examination of the land, or the presentation of the application in person at the local land office.

An application for one of the minor children mentioned in the act must be signed by his guardian for him, with a statement of relationship, if a natural guardian, or with a copy of appointment as guardian, certified to by the proper officer, if a legally appointed guardian.

In case of application by the heirs of a deceased absentee Wyandotte Indian so enrolled the application must be in the name of the deceased ancestor signed by all the heirs, or by one of them for all, in which case power of attorney to make such application, signed by all of the other heirs, must accompany the application.

If all or part of such heirs are minors, the same statement of relationship of the natural guardian, or evidence of appointment as legal guardian by the person acting for them, must be furnished as in the case of an enrolled minor provided for above.

As the act does not provide for the payment of any fees for filing, you will make no charge in any of these cases.

Very respectfully,

W. A. Richards,
Commissioner.

Approved October 28, 1904.

E. A. Hitchcock,
Secretary of the Interior.

(List of names omitted.)

FEDERAL WATER POWER ACT

[Reported, 47 L. D. 595]

CIRCULAR NO. 729 [1]

INSTRUCTIONS RELATIVE TO SECTION 24, FEDERAL WATER POWER ACT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 20, 1920.

Registers and Receivers, United States Land Offices.

SIRS: Section 24 of the Federal water power act, reads as follows:

> SEC. 24. That any lands of the United States included in any proposed project under the provisions of this act shall from the date of the filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purpose of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such a determination, shall declare such lands open to location, entry, or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purpose of this act, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this act, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites or in connection with water-power development or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.

Action is being taken by this office on locations, entries, selections, and filings made prior to June 10, 1920, the date of the approval of the Federal water power act, in accordance with the proviso to said section.

Applications of any sort filed subsequent to June 10, 1920, looking toward the acquisition of title to public or reserved lands, within, or in conflict with power projects under this act, or which shall have been "reserved or classified as power sites," will be governed by the following rules:

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[1] Amended by Circular No. 1044, p. 524.

ACTION TO BE TAKEN BY LOCAL OFFICERS

1. You will at once reject, subject to appeal, any application filed subsequent to June 10, 1920, which is wholly in conflict with lands reserved or classified as power sites, or covered by a power application under this act, except—

(*a*) A homestead application predicated upon settlement prior to the reservation, classification, or filing of the power application, and accompanied by corroborated affidavit of such prior settlement.

An application of this character should be received, noted in pencil on your records, and transmitted to this office by special letter, for consideration, without allowance.

(*b*) Any application which, were it not for the reservation, classification, or power application, would be allowable, wherein claim is made by way of corroborated affidavit, that applicant has acquired equitable rights antedating the withdrawal. Such applications should be received for transmission to this office for consideration, but should not be allowed by you.

2. Where any such application is only partially in conflict with lands reserved or classified as power sites, you will allow it only as to the subdivisions not in conflict.

3. Where any application is presented which conflicts with a transmission line withdrawal of a strip of land crossing the land applied for, you will, if otherwise regular, allow the entry, but will note upon the face of the entry papers, and upon your records, the following:

> Entry made subject to conditions and reservations of section 24, Federal water power act, approved June 10, 1920, in so far as transmission line withdrawal No. ——, created by Executive withdrawal of ——— (or water-power application heretofore filed under the act of June 10, 1920), may affect same.

4. Whenever you find it necessary to reject an application, in carrying out these instructions, you should inform the applicant that he is at liberty to file an application for the restoration of such withdrawn lands, under the provisions of section 24 of the Federal water power act, but that favorable action upon such application will not give the applicant any preference right, or right to preferential treatment if or when the lands are finally restored. The lands will be so restored in strict accordance with Circular No. 324 of May 22, 1914 (43 L. D. 254), as modified by Circular No. 678[a] of March 31, 1920.

GENERAL

Notify all inquirers that withdrawn public lands are not subject to lease, or other disposition, other than such as is specifically recognized by the Federal water power act; that there is no way to acquire preference rights, preferential treatment, or equitable or legal preference, excepting where legal or equitable rights were acquired before the withdrawal of the land, and that, in all cases where such rights are claimed, careful investigation as to its bona fides will be made before it is recognized.

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[a] Circular No. 678 has been superseded by Circular No. 822, p. 779.

You will further observe that, while the act of June 25, 1910, allows metalliferous mineral explorations and applications based thereon, the act of June 10, 1920, makes no exceptions.

Therefore, in future, any mineral application or location, based upon discoveries made subsequent to June 10, 1920, which is in conflict with lands reserved or classified as power sites, should be rejected by you, subject to appeal.

If the application alleges discovery or location prior to the date of the act, it should be accompanied by corroborated affidavit, attesting the fact, and transmitted to this office for consideration, without allowance.[2]

Applications for permit under the oil leasing act of February 25, 1920, embracing lands applied for under the Federal water power act, or reserved or classified as power sites, should be received and transmitted, as heretofore, to this office. If, upon reference of such an application for permit to the commission, it shall determine that a permit may be granted without injury to or destruction of the value of the lands for the purpose of power development, the application will be considered and acted upon in accordance with section 2, circular 672.

Lands within final power permits under the act of February 15, 1901 (31 Stat. 790), or transmission-line permits or approved rights of way, whether under said act of February 15, 1901, or the act of March 4, 1911 (36 Stat. 1253), are deemed "classified as valuable for power purposes," and, whether withdrawn as power-site reserves or not, occupy the status of withdrawn lands for the purposes of these regulations.

Very respectfully,

C. M. Bruce,
Acting Commissioner.

Approved November 20, 1920.

Alexander T. Vogelsang,
Acting Secretary.

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL WATER POWER ACT, AS TO CERTAIN LANDS

Federal Power Commission,
Washington, April 29, 1922.

Dear Mr. Spry: Recently your office submitted to the commission a number of requests for determination under section 24 of the Federal water power act, with respect to lands reserved or classified as power sites for transmission line purposes. You are advised that at its meeting of April 17, 1922, the commission made a general determination as to lands so withdrawn as indicated in the following quotation from the minutes of the meeting of said date:

> The executive secretary having called to the attention of the commission the desirability of making a general determination under the provisions of

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[2] See amendment, p. 524.

section 24 of the Federal water power act with respect to lands of the United States heretofore or hereafter reserved or classified as power sites which are applied for, or occupied and used for, transmission line purposes only, the commission voted as follows:

(*a*) That where lands of the United States have heretofore been, or hereafter may be, reserved or classified as power sites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified, or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal water power act.

(*b*) That when notice is given to the Secretary of the Interior of reservations made under the provisions of section 24 of the Federal water power act, such notice shall indicate what lands so reserved, if any, may, in accordance with the determination of the preceding paragraph, be declared open to location, entry, or selection subject to the reservation of said section 24.

The exception from the effect of this determination of lands withdrawn for transmission lines which are occupied in trespass by such lines does not imply that the commission is opposed to the restoration to entry of lands so occupied. Where you found that lands applied for are occupied in trespass, the application should be referred to this office for such action as it deems to be appropriate to the particular circumstances existing in the case. It is believed that all other lands withdrawn for transmission line purposes can be handled directly by your office under the above determination.

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Very truly yours,
O. C. MERRILL, *Executive Secretary.*

The COMMISSIONER,
The General Land Office.

[Reported, 51 L. D. 307]

CIRCULAR NO. 1044

AMENDING CIRCULAR NO. 729 OF NOVEMBER 20, 1920 (47 L. D. 595), RELATIVE TO SECTION 24 OF THE FEDERAL WATER POWER ACT OF JUNE 10, 1920 (41 STAT. 1063)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 14, 1925.

Registers, United States Land Offices.

SIRS: So much of Circular No. 729, of November 20, 1920 (47 L. D. 595) (Federal water power act of June 10, 1920) (41 Stat. 1063), which reads "If the application alleges discovery or location prior to the date of the act, it should be accompanied by corroborated affidavit, attesting the fact, and transmitted to this office for consideration, without allowance," is hereby amended so as to read:

If the application alleges a valid location made prior to the date of the act and is accompanied by corroborated affidavit attesting the fact, the patent proceedings may be prosecuted to completion. The proof should be considered upon its merits, and, if found regular, final certificate may issue although a protest may have been filed by the division inspector; but the claimant should be advised in such cases that patent will be withheld by the General Land Office pending a report by the division inspector upon the bona fides of the claim; also, that when the case is adjudicated in the General Land Office determination will be made whether or not the claim is subject to the provisions of section 24 of the act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved December 14, 1925.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR No. 1101

INSTRUCTIONS IN COMPLIANCE WITH DEPARTMENTAL ORDER OF NOVEMBER 1, 1926

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 8, 1926.

Registers, United States Land Offices.

SIRS: The executive secretary of the Federal Power Commission has agreed to adopt, and unless unforeseen obstacles arise, to continue indefinitely the following practice:

When applications under the Federal water power act involving public lands are filed with field representatives of the commission, copies of the application will be forwarded to the executive secretary, who will immediately notify the General Land Office of such filing, and of the date it was received by the commission, which will be considered as the date of priority for purposes of land withdrawal. A copy of the letter to the General Land Office will be mailed directly by the executive secretary to the register of the United States land district in which the public lands affected are located.

You will, upon receipt of such letter, make notation on your records to the effect that the public land described is withdrawn from entry, location, or other disposal until otherwise directed by the commission or by Congress, as provided by section 24 of the Federal water power act, the effective date being the date the power project application was filed with the commissioner. You should at once make careful examination of your records for applications, selections, entries, or other disposition of the lands affected filed or allowed after the effective date of priority, and prior to the receipt of the notice of withdrawal in your office, and report to this office any such conflict. If no such conflict exists, you should so state in your report.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

FLORIDA LANDS

CIRCULAR No. 1016

ADJUSTMENT OF HAMILTON TOWN SITE, FLORIDA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 13, 1925.

Register and Receiver, Gainesville, Fla.

GENTLEMEN: Public No. 499, Sixty-eighth Congress (43 Stat. 1012), an act authorizing the Secretary of the Interior to adjust disputes or claims by settlers, entrymen, selectors, grantees, and patentees of the United States against the United States and between each other, arising from incomplete or faulty surveys in T. 28 S., Rs. 26 and 27 E., Tallahassee Meridian, Polk County, in the State of Florida, approved February 27, 1925, reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and he is hereby, authorized to equitably adjust disputes and claims of settlers, entrymen, selectors, grantees, and patentees of the United States, their heirs or assigns, against the United States and between each other, arising from incomplete or faulty surveys in section 31, township 28 south, range 26 east, and in sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, and 21, township 28 south, range 27 east, Tallahassee meridian, Polk County, in the State of Florida, and to issue directly or in trust as may be found necessary or advisable, patent to such settlers, entrymen, selectors, grantees, and patentees, their heirs or assigns, for land claimed through settlement, occupation, purchase, or otherwise in said described area, preserving, as far as he may deem equitable, to those claimants now in possession of public land the right to have patented to them the areas so occupied: *Provided,* That a charge of $1.25 is to be made for each acre or fraction thereof of Government land patented under this act: *Provided further,* That rights acquired subsequent to the withdrawal of July 5, 1921, shall not be recognized or be subject to adjustment hereunder.
>
> SEC. 2. That the Secretary of the Interior is authorized to accept any and all conveyances of land for purposes of adjustment and to make all necessary rules and regulations in order to carry this act into effect.

In accordance with the provisions of the above act the following regulations are prescribed to govern the filing of applications preliminary to the adjudication of rights cognizable under said act:

1. Individuals or corporations seeking relief under this act are required to file an application within 90 days from the date of issuance of these regulations with the register and receiver at the Gainesville office, giving the description and area of the lands desired in accordance with the plat of resurvey and the act under which the application is filed, together with a comprehensive statement of the facts constituting the grounds for the relief sought. Where the grounds for relief are based on record evidence of title through purchase or otherwise, there must be filed with the application an abstract of title brought down to a day reasonably near the date of the pres-

entation of the application, showing full title in the applicant, who must as soon as practicable thereafter file a supplemental abstract brought down so as to include the date of the filing of the application. No application for patent, based upon a claim which had its inception after July 5, 1921, will be deemed as falling within the purview of the above act. Patent, if and when issued, will be in the name of the applicant. Transfers made subsequent to the date of the application will be disregarded.

2. Under the provisions of the above act only applications based on rights acquired prior to July 5, 1921, the date of the withdrawal, can be considered; and only lands of the United States may be acquired, unless the applicant submits with his application an affidavit from the owner of the land sought authorizing an exchange or other method of adjustment.

3. In order to facilitate the administration of the adjustment the owner of the land on July 5, 1921, should as far as possible include in his application for relief all rights accruing by or through such ownership.

4. With respect to the Hamilton townsite, the advisability of issuing patent in trust to the owner of the land therein on July 5, 1921, for the benefit of transferees or the present owners in possession will be considered.

5. A representative or committee of this office will, if found advisable, be detailed to review the papers and visit the field for the purpose of compromising or otherwise adjudicating the claims to the area involved. Further field investigation will be made if deemed necessary or expedient.

6. The register and receiver at the Gainesville office will assign a serial number to each application and will after the expiration of the time allowed for the filing of applications forward all applications and other matters filed in connection therewith without action to the Commissioner of the General Land Office at Washington, D. C., who will thereafter as soon as may be submit to the department a complete report covering the whole situation pursuant to which the department will render a decision. The usual 30 days will be allowed from the date of such decision within which to apply to the Secretary of the Interior for a rehearing of the decision in case the party concerned has occasion to feel aggrieved thereby.

7. After the expiration of the period for the filing of motions for rehearing the Secretary of the Interior will render a final decision announcing the awards made.

8. Mimeographic copies hereof will in a short time be furnished you for distribution and interested parties may also secure same on request to the Commissioner, General Land Office, Washington, D. C.

9. You will post a copy hereof in your office; forward copies to post offices on or near the land with request that same be posted therein; and you will, furthermore, give all possible publicity to the promulgation of these regulations without expense to the Government.

Very respectfully,

William Spry, *Commissioner.*

Approved June 13, 1925.

E. C. Finney, *First Assistant Secretary.*

Circular No. 1164

ADJUSTMENT OF CLAIMS ARISING BY REASON OF CERTAIN INCOMPLETE OR FAULTY SURVEYS, LAKE COUNTY, FLA.

Department of the Interior,
General Land Office,
Washington, September 22, 1928.

Register, *Gainesville, Fla.*

Sir: The act of May 21, 1928 (45 Stat. 619), provides for the equitable adjustment of disputes and claims of settlers and others against the United States and between each other as to certain described land as follows:

> That the Secretary of the Interior be, and he is hereby, authorized to equitably adjust disputes and claims of settlers, entrymen, selectors, grantees, and patentees of the United States, their heirs or assigns, against the United States and between each other arising from incomplete or faulty surveys in township 19 south, range 26 east, and in sections 7, 8, 17, 18, 19, 30, 31, township 19 south, range 27 east, Tallahassee Meridian, Lake County, in the State of Florida, and to issue directly or in trust as may be found necessary or advisable patent to such settlers, entrymen, selectors, grantees, and patentees, their heirs or assigns, for land claimed through settlement, occupation, purchase or otherwise in said described area, preserving, as far as he may deem equitable, to those claimants now in possession of public land the right to have patented to them the areas so occupied: *Provided*, That a charge of not less than the appraised value of the land, exclusive of any improvements placed thereon, be made for each acre or fraction thereof of Government land patented under the provisions of this act, except that adjustment may be effected by exchange of lands patented for lands substantially equal in area, in which event payment shall be required of the difference in appraised values where the value of the land owned by the Government exceeds that of the land offered in exchange: *Provided further*, That rights acquired subsequent to the withdrawal of December 23, 1925, shall not be recognized or be subject to adjustment hereunder.
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> Sec. 2. That the Secretary of the Interior is authorized to accept any and all conveyances of land and to cause all necessary surveys to be made, to effect the purposes of this act. All adjustments hereunder shall conform to the approved plats of such survey or resurvey, and no other survey will be recognized.
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> Sec. 3. That in fixing the appraised price of such lands the Secretary of the Interior shall consider and give effect to the good faith and equities of the occupants of any of the areas found to be public land; and if the whole or any part of such land be within the corporate limits of the town of Tavares, the survey of the lots, blocks, streets, and alleys shall be considered as executed under the provisions of section 2384, Revised Statutes, but as far as practicable shall conform to the existing surveys and plats of the lots in such town: *Provided*, That the Secretary may, in his discretion, issue a patent to Lake County, Florida, to not exceeding one acre upon which the county courthouse is located, such patent to provide that the land shall revert to the Government of the United States if the county sells any part thereof or devotes it to any use other than as a site for a courthouse and grounds.
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> Sec. 4. That the provisions of section 2382, Revised Statutes, as modified by sections 2384 and 2385, Revised Statutes, shall extend to all areas surveyed as within and a part of the town of Tavares: *Provided*, That subject to adverse rights any person entitled to a preference right to purchase under the provisions of this act may secure under this section lands in his actual possession, whether in a single tract or in surveyed lots, of a maximum area of eighty-four thousand square feet, upon payment therefor at a rate not exceeding $10 for four thousand two hundred square feet, but any applicant may elect to proceed under section 1 of this act: *Provided further*, That all the provisions hereof applicable to the town of Tavares shall be extended to any other established town within the area affected by this act.

1. The plats of recent surveys will be officially filed in the United States land office at Gainesville, Fla., in the usual manner, but the areas affected will be subject to disposition only in the manner herein indicated. Further directions will be given if any of such lands remain unappropriated after the termination of the period within which preference applications may be presented.

2. The Secretary of the Interior will, at as early a date as practicable, fix the appraised price of all the lands affected by the act and in such appraisal will consider and give effect to the good faith and equities of the occupants of the areas that have been found to be public lands of the United States.

3. To avoid delay, all applications to purchase should be accompanied with the appraised price of the land, which will be returned in the event the application is finally rejected. Applications will not, however, be refused because of the applicant's failure to make advance payment. Where the appraised price is not tendered with the application, payment under penalty of rejection will be required within 30 days from notice that the application has been approved subject to such payment.

4. All adjustments, whether through exchange, purchase, entry, or selection must be made in terms of Federal surveys, the plats of which may be found in the United States land office at Gainesville. If absolutely required, additional surveys will be directed, but it is believed that the present surveys will be found sufficient. Where public lands are exhibited on the Federal plats of survey as subdivided into lots, blocks, streets, and alleys, the official filing of the plats will constitute a dedication to the public of the areas shown as streets and alleys on such plats. The word "streets" as used in the act is a comprehensive term and includes ordinary streets, avenues, boulevards, driveways, roadways, etc., where appearing upon the official plat. The term, however, does not include private ways not shown on the plat nor railway rights of way, even though the location of such way is indicated on the plat. The areas designated "parks" on the plats will in like manner be reserved and devoted to the uses indicated.

5. Lake County, Fla., may, upon application of its duly constituted authorities and without payment, receive a patent for not exceeding 1 acre of land in the city of Tavares upon which its courthouse is situated. Such patent will contain the provision that the land shall revert to the Government of the United States if the county sells any part thereof or devotes it to any use other than as a site for a courthouse and grounds.

6. Individuals or corporations seeking relief under this act must file an application with the register at the Gainesville United States land office, which shall set forth (*a*) the name and address of the applicant; (*b*) description and area of the lands claimed in accordance with existing plats of survey, if practicable; (*c*) the section of the act upon which the application is based; and (*d*) a comprehensive statement of the facts constituting the grounds for the relief sought. Such application may be presented to the register immediately after the plats of the recent Federal survey are officially filed in the United States land office at Gainesville, and must be tendered within three months after the date of the official filing of such plat.

7. Titles to land not situated within the limits of established towns must be adjusted under section 1 of the act.

8. Lands within the limits of Tavares or any other established town are subject to disposition under section 4 of the act, but any applicant may elect to proceed under section 1. If no such election is presented with an application for lands in an established town, such application will be adjudicated under section 4. All such lots must be paid for at the rate of not to exceed $10 for 4,200 square feet, with the limitation of 84,000 square feet to any one applicant.

9. It will not be necessary for an equitable owner to prove actual residence on any lot or lots applied for under section 4, but he must show that he was in actual possession of the land and that he was holding it under claim of right or color of title. Applications to purchase under section 4 based on settlement alone must be accompanied by proof of settlement.

10. Where the grounds for relief are based on record evidence of title, through purchase or otherwise, there must be filed with the application an abstract of title brought down to a day reasonably near the date of the presentation of such application, showing full equitable title in the applicant, or in lieu of such abstract a certificate of the recorder of deeds that such applicant is the record owner of the land embraced in his application. Where, however, the form of relief sought is the exchange of privately owned lands for Government land, affected by the act, an abstract of title must be presented.

11. No deed reconveying lands in private ownership as a basis for exchange of Government lands affected by the act should be placed of record unless and until such proposed exchange has been approved by the department. In the event of such approval the proponent will be advised thereof and directed to duly execute and properly record a deed reconveying the privately owned land to the Government of the United States, to extend the abstract of title so as to include the record of such deed, and show that at the time of such record the land was free from adverse claim or any incumbrance whatsoever.

12. All applicants seeking relief under any provision of the act must for the period of 30 days, under direction of the register of the Gainesville United States land office, publish in a newspaper of general circulation notice of his application.[a] No particular form of notice is essential, but such notice must include the name and address of the applicant, an intelligible description of the land, a brief statement of the nature of the claim, and the date of the first publication. Where the areas affected are in an established town and have been subdivided into lots and blocks and are so exhibited on the Federal plats of survey, the numbers of the lots and blocks and the name of the town will suffice. Lands not subdivided into town lots must be described in terms of our recent surveys if practicable. Where part of the legal subdivision only is sought, that fact should appear in the notice. The register will designate as the medium of publication an established newspaper published nearest the land. Such publication must be made at the expense of the applicant. A copy of such notice will be posted in the usual manner in the United States land office.

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[a] See instructions of Oct. 19, 1929, p. 1149.

13. Any protest against an application, notice of which was published in the manner required by paragraph 12, whether based on a conflicting right or otherwise, must be filed in the United States land office at Gainesville within 40 days from and after the first date of publication mentioned in the notice. Any such protest must be accompanied by evidence that a copy thereof was served on the applicant.

14. The register, if proper proofs of newspaper publication be furnished will as soon as practicable after the period of 40 days following the first date of publication, transmit the application to the General Land Office with all papers filed in connection therewith. He will report whether any protest was filed against such application and will recommend what disposition should be made thereof.

Very respectfully,

William Spry, *Commissioner.*

Approved September 22, 1928.

E. C. Finney, *First Assistant Secretary.*

HOLIDAYS AND OFFICE HOURS

[Reported, 41 L. D. 491]

CIRCULAR NO. 199 [1]

DAYS ON WHICH OFFICES CAN BE CLOSED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 29, 1912.

United States Surveyors General, Registers and Receivers, and Chiefs of Field Divisions.

GENTLEMEN: It having come to the knowledge of this office that it is the practice of some subordinate officers of this bureau to suspend the public business and close their respective offices on days set apart as holidays by legislative or executive authority of the States in which the offices are located, your attention is called to circular of November 19, 1908, which directs the closing of all subordinate offices of this bureau on January 1, February 22, May 30, July 4, the first Monday in September, and December 25, which are declared public holidays by act of June 28, 1894 (28 Stats. 96). Also on such day as may be designated by proclamation of the President as Thanksgiving Day. Your attention is also called to Executive order of May 22, 1909, on page 11 of circular of February 1, 1910, regulating leaves of absence, which directs that all offices of the Government, etc., shall, when January 1, February 22, May 30, July 4, and December 25 fall on Sunday, be closed to public business on the following Monday, excepting that when a State law fixes for a holiday another day than the Monday following such legal holiday, Government offices situated in such States shall be closed on the day which is in conformity to State law.

By letter of June 6, 1904, the Assistant Attorney General of the Department of the Interior advised the Secretary of the Interior as follows:

> I advise you that the law authorizes the closing of Federal offices located in the several States on all days declared holidays by the law of the State in which the office is located, and that employees in such offices should not be required to perform services on such days unless the state of the public business demands it.

While this opinion was approved by the Secretary, it was never promulgated as a regulation of the department. On the contrary, the Secretary, by letter of May 19, 1905, informed this office that the matter of closing the subordinate offices of the General Land Office on such days as are set apart as holidays by legislative or executive authority of the State in which the offices are located is a matter for determination by the Commissioner of the General Land Office upon such report or information as may be furnished by the local officials.

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[1] See order of Apr. 5, 1926, p. 535.

You are therefore instructed to refrain hereafter from closing your offices on any days other than those specified in circular of November 19, 1908, unless otherwise directed.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved December 7, 1912.

LEWIS C. LAYLIN,
Assistant Secretary.

CIRCULAR NO. 903 [2]

HOURS OF LABOR—LEAVES OF ABSENCE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 29, 1923.

To all field officers of the General Land Office.

GENTLEMEN: My attention has been directed to the nonobservance of existing regulations governing hours of labor and leaves of absence.

You are therefore instructed that, Sundays and days declared legal holidays by law or Executive order excepted, all field offices are to be uniformly opened for official business at 9 o'clock a. m. and remain open continuously until 4.30 o'clock p. m., standard time, and that employees will be permitted one-half hour for lunch between the hours of 12 m. and 1 p. m.

On Saturdays, from June 15 to September 15, field offices must remain open continuously from 9 a. m. until 1 p. m., and no luncheon period is allowable.

No variation from these hours will be permitted without special authority from this office, upon such representations as may be made in specific cases, but in no event will a modification be made which will reduce the hours of labor of any employee below the seven hours required by law.

All employees of your office, before absenting themselves from duty, must furnish for your approval and signature application for leave of absence on Form 1–034. Upon return to duty this card must be filled out in all particulars, signed by you, and forwarded to this office for approval of the chief clerk and filing for record purposes.

In order to assure that no disbursing officer will pay salaries for any periods of leave in excess of the 30 days annual and 30 days sick, all offices should keep an accurate record of all leaves of absence of employees, which record shall be subject to inspection, and may be called for at any time by this office with your certification. Any disbursing officer paying an employee for any period of absence not covered by proper grant will be held responsible.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

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[2] See order of May 9, 1927, p. 535.

ORDER NO. 122

FIELD OFFICES NOT TO CLOSE ON STATE HOLIDAYS

DEPARTMENT OF THE INTERIOR,
Washington, April 5, 1926.

Existing laws make no provision for the closing of field offices under this department on State or other local holidays. Accordingly all field offices under the department will remain open on other than national holidays, but shall be closed to public business upon holidays established under authority of a law of Congress. Absences of employees from duty on State and local holidays must be covered by leave applications and grants in conformity with the regulations in force.

HUBERT WORK, *Secretary.*

EXECUTIVE ORDER

It is hereby ordered that from the first Saturday of June to the last Saturday of September, both inclusive, of each year until further notice, four hours, exclusive of time for luncheon, shall constitute a day's work on Saturdays for all clerks and other employees of the Federal Government, wherever employed; and all Executive or other orders in conflict herewith, except the Executive Order of April 4, 1908, relating to certain naval stations, are hereby revoked.

Provided, however, That this order shall not apply to any bureau or office of the Government, or to any of the clerks or other employees thereof, that may for special public reasons be excepted therefrom by the head of the department or establishment having supervision or control of such bureau or office, or where the same would be inconsistent with the provisions of existing law.

CALVIN COOLIDGE.

THE WHITE HOUSE, *May 9, 1927.*

[No. 4644]

authority of the State in w[illegible] are located is a matter for determination by the Commissioner of the General Land Office upon such representations as may be furnished by the local officials.

You are therefore instructed to refrain hereafter from closing your [illegible] on any days other than those specified in circular of November [illegible] unless otherwise directed. [illegible]

[illegible]

CIRCULAR No. [illegible]

HOURS OF LABOR—LEAVES OF ABSENCE

[illegible] OF THE INTERIOR,
GENERAL LAND OFFICE,

[illegible]

remain open continuously [illegible] luncheon period [illegible]

No variation from these hours will be permitted without special authority from this office, upon such representations as may be made in specific cases, but in no event will a modification be made which will reduce the hours of labor of any employee below the seven hours required by law.

All employees of your office, before absenting themselves from duty, must furnish for your approval and signature application for leave of absence on Form [illegible]. Upon return to duty this card must be filled out in all particulars, signed by you, and forwarded to this office for approval of the chief clerk and filing for record purposes.

In order to assure that no disbursing officer will pay salaries for any periods of leave in excess of the 30 days annual and 30 days sick, all offices should keep an accurate record of all leaves of absence of employees, which record shall be subject to inspection, and may be called for at any time by this office with your certification. Any disbursing officer paying an employee for any period of absence not covered by proper grant will be held responsible.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

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[1] See order of May 9, 1927, p. 535.

HOMESTEADS

[Reported, 34 L. D. 601]

FINAL PROOFS

Department of the Interior,
General Land Office,
Washington, D. C., May 9, 1906.[1]

Circular of July 17, 1889 (9 L. D. 123), is hereby revoked and the following rules substituted therefor, viz:

1. Final proofs in all cases where the same are required by the general land laws or regulations of the department, must be taken in accordance with the published notice; provided, however, that such testimony may be taken within 10 days following the time advertised in cases where accident or unavoidable delays have prevented the applicant or his witnesses from making such proof on the day specified. Section 7 of the act of March 2, 1889 (25 Stat. 854).

2. Where final proof or any part thereof has not been taken on the day advertised, or within 10 days thereafter under the exceptions and as required in rule 1, you will direct new advertisement to be made; and if no protest or objection is then filed the proof theretofore submitted, if in compliance with the law in other respects, may be accepted.

3. If the testimony of either claimant or witness is taken at a different place than that advertised the commissioner may, if in his opinion same is required, cause new advertisement for the proof to be taken at such place as he may deem advisable, or if in his opinion new advertisement is unnecessary, and no protest or objection has been filed, the proof theretofore submitted, if regular in all other respects, may be accepted without further testimony.

4. When a witness not named in the advertisement is substituted for an advertised witness, unless two of the advertised witnesses testify, require new advertisement of the names of the witnesses who do testify at such time and place as you may direct; and if no protest or objection is then filed, the proof theretofore submitted, if satisfactory in all other respects, may be accepted.

5. Where final proof is taken before an officer not named in the advertisement, it may be accepted if otherwise sufficient, provided the proof is taken at the time and place designated in the printed notice, or within 10 days thereafter under the exceptions provided in rule 1; and provided further, that both the officer advertised to take such proof and the officer taking same shall officially certify that no protest was at any time filed before him against the claimant's entry.

6. Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of

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[1] See circulars of Aug. 23, 1915 (No. 433), p. 1028 and Sept. 29, 1927, p. 312.

foreign-born applicants should be received only when under the hand and seal of the proper officer of the court in which such papers appear of record. However, where it is shown that the judicial record has been lost or destroyed, proof of citizenship in such cases may be established under the rules governing the introduction of secondary evidence.

7. When proof is made before the register or receiver and the final certificate does not bear the date of proof, the register must indorse on the back of the final certificate of entry, at the time of its issuance, a brief statement of the reason for the delay in issuance of final papers, the indorsement to be in each instance signed by the register. If the delay was caused by failure of applicant to tender the money or other consideration at the time of making proof, additional evidence must be furnished showing that the claimant had not, at date of certificate, transferred the land, which evidence may consist of his affidavit taken before some officer authorized to administer oaths. In cases where it appears that the delay in issuance of final papers was not the fault of the claimant, the proofs being otherwise regular, the Commissioner of the General Land Office may in his discretion pass same to patent.

8. When proof is made before any officer other than the register or receiver a reasonable time will be allowed for the transmission of papers to the local office, and if a longer interval is shown between date of proof and date of certificate, if the proof is otherwise sufficient and the record contains no reason for the delay, the register will indorse upon the back of the final certificate the statement required by rule 7; and if such delay was the fault of the claimant, require the additional evidence prescribed by rule 7.

9. Where final proof has been accepted by the local officers prior to promulgation of this circular, if in other respects satisfactory except that the register and receiver have failed to submit an explanation as to delay in issuance of final papers as required by rule 7, the Commissioner of the General Land Office may, if in his opinion the facts and circumstances so warrant, pass the cases to patent in the absence of other objection.

W. A. Richards, *Commissioner*.

Approved.

E. A. Hitchcock, *Secretary*.

[Reported, 36 L. D. 46]

ADDITIONAL HOMESTEAD ENTRIES—ACTS OF APRIL 28, 1904, AND MARCH 2, 1889

Department of the Interior,
General Land Office,
Washington, D. C., July 27, 1907.[2]

Registers and Receivers, United States Land Office.

Gentlemen: (1) Section 2 of the act of April 28, 1904 (33 Stat. 527), is substantially a reenactment of section 5 of the act of March 2,

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[2] See circulars of Sept. 11, 1908, p. 540, Oct. 2, 1912 (No. 177), p. 546, and Mar. 14, 1924 (No. 920), p. 602.

1889 (25 Stat. 854), only modified so as to apply to entries for less than 160 acres each, made after the date of the act (April 28, 1904), as well as those made before, and provides for an additional entry of land which shall be contiguous to the land embraced in the original entry, for which the final proof of residence and cultivation made on the original entry shall be sufficient, but of which no party shall have the benefit who does not, on the date of his application therefor, own and reside upon the land covered by his original entry, and which shall not be permitted, or if permitted shall be canceled, if the original should fail for any reason prior to patent or should appear to be illegal or fraudulent.

(2) Applicants for additional entries under this section will be required to produce evidence that they own and reside upon the land embraced in their original entries, which shall be described by legal subdivisions and by reference to the number and date of the original entry, the evidence to consist of their own affidavits corroborated by the affidavits of two disinterested witnesses, executed before any officer authorized to administer oaths in such cases in the county, parish, or land district in which the land applied for is situated, under section 2294, United States Revised Statutes, as amended by the act of March 4, 1904 (33 Stat. 59). These affidavits and the homestead application and statements required to be made in connection therewith may be upon form No. 4–018.

(3) Section 3 of the act of April 28, 1904, forbids the acquisition of title to lands entered under that act through commutation under the provisions of section 2301 of the Revised Statutes, and it follows that additional entries can not be made under section 2 of that act by persons who have, prior to their applications to make such additional entries, commuted their original entries; nor can title be acquired to lands embraced in such additional entries by the commutation of the original entries after the additional entries have been allowed. Any person who commutes his original entry after he has made an additional entry will forfeit his right to acquire title under his additional entry.

(4) Section 6 of the act of March 2, 1889 (25 Stat. 854), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received receiver's final receipt, for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land originally entered by him, as shall not with it exceed a total of 160 acres.

(5) Applicants for additional homestead entries under this section must file applications to enter on the proper homestead form so modified as to describe, by number, section, township, and range, the original entry and give the date of issuance of receiver's final receipt thereupon. They are not required to show that they are still the owners or occupants of the land originally entered.

(6) Upon allowance of the additional entry, they will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and

within the period prescribed by statute, to submit proof of such residence and cultivation as in other homestead cases.

Very respectfully,

Fred Dennett, *Acting Commissioner.*

Approved July 27, 1907.

Jesse E. Wilson, *Acting Secretary.*

(Acts and form omitted.)

[Reported, 37 L. D. 160]

ADDITIONAL HOMESTEAD ENTRIES—SECTION 3, ACT OF APRIL 28, 1904

Department of the Interior,
General Land Office,
Washington, D. C., September 11, 1908.

Registers and Receivers, United States Land Offices.

Gentlemen: Section 3 of instructions approved July 27, 1907 (36 L. D. 46), is hereby amended to read as follows:

(3) Section 3 of the act of April 28, 1904, forbids the acquisition of title to lands entered under that act through commutation, under the provisions of section 2301 of the Revised Statutes: Therefore, if the original homestead entry is commuted, no title will be passed to the entryman for the additional entry until he submits proof in the manner required by the homestead laws, showing that he has resided upon and cultivated the land included in the original entry for a period of five years or that he has resided upon and cultivated the land in the additional entry for such period as added to that of his residence and cultivation of the land in the original entry will make the full period of five years. Entrymen who do not commute the original entry may acquire title to the land in both entries by submission at the proper time, after due notice, of proof of residence on and cultivation of the original entry for a period of five years.

Very respectfully,

Fred Dennett, *Commissioner.*

Approved.

Frank Pierce, *Acting Secretary.*

[Reported, 37 L. D. 330]

ONE QUARTER SECTION—SECTION 2289, REVISED STATUTES

Instructions

Department of the Interior,
General Land Office,
Washington, December 1, 1908.

Commissioner Dennett to Registers and Receivers:

On and after January 1, 1909, the following rule will be in force and effect:

The term " one quarter section " as used in section 2289, United States Revised Statutes, is to be understood as meaning 160 acres. Therefore, an entry under said section must be limited to approximately 160 acres. Where such application is filed for lands in excess of 160 acres, it may be allowed if the area in excess of 160 acres is not greater than the deficiency would be if the smallest legal subdivision were eliminated.

Instructions and decisions in conflict with above rule will not be followed after December 31, 1908, and entries made thereafter must conform to said rule.

The above rule is adopted in view of the following considerations. In the cases of John W. Douglas (10 L. D. 116) and Wood *v.* Bick (13 L. D. 520), and other cases, it was held that preemption and homestead claims may embrace lands in excess of 160 acres if the same be for what is in such decisions termed a technical quarter section. In the said case of Douglas, a preemption claim, the lands consisted of six lots in the northeastern portion of the section aggregating an area of 201.05 acres. Following said decisions, this department has permitted such entries to be made for the entire portion of a section, so called a technical quarter section. It is not believed, however, that it is accurate to use the term, "a technical quarter section," in designating an aggregation of lots surveyed and numbered simply because they lie within a certain portion of the section. A number of townships in various places are so surveyed that the section lines in the north and west tiers have to be elongated to reach preexisting exteriors causing the areas of these fractional sections to aggregate as high as 2,000 acres each, and in such cases the so-called quarter sections or "technical" quarter sections run above 800 acres each. There are many townships in which so-called quarter sections run considerably above 200 acres. Sometimes these so-called quarter sections contain 6 lots, 2 of 20 acres each and the other 4 of 40 acres each. It will be seen that in such cases an even 160 acres may be obtained, and it appears that entries should be limited to that area where possible.

It is clear that Congress, in enacting the homestead law, intended to allow ordinary homestead entries to embrace only 160 acres. The language is:

> Shall be entitled to enter one quarter-section or less quantity * * * subject to pre-emption at one dollar and twenty-five cents per acre; or eighty acres or less of such unappropriated lands at two dollars and fifty cents per acre, to be located in a body in conformity to the legal subdivisions of the public lands.

It is also provided in said section that any person owning and residing on land may make an entry under said section for lands contiguous to his land, which shall not, with the lands so already owned and occupied, exceed in the aggregate "160 acres."

The said section was amended by section 5 of the act of March 3, 1891 (26 Stat. 1095), so as to provide that no person who is the proprietor of more than "160 acres of land in any State or Territory shall acquire any right under the homestead law."

Section 2306, Revised Statutes, also provides for the making of an additional entry where the quantity theretofore entered is less than 160 acres. In the act of March 2, 1889 (25 Stat. 854), sections 5 and 6, provision is made for the allowance of additional homestead entries to an aggregate area of 160 acres. A like provision is also in section 2 of the act of April 28, 1904 (33 Stat. 527).

It seems clear that Congress intended to grant the right to enter the quantity of 160 acres and not a particular part of any section regardless of area. A section of land contains 640 acres; a quarter section contains 160 acres. There seems no reason why an excess of that area should be allowed simply because the lands fall in a portion of the section designated as a technical quarter section. Where the lands are divided into subdivisions and given lot numbers, it is not believed that the term "quarter section" can properly be applied.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

JAMES RUDOLPH GARFIELD, *Secretary.*

[Reported, 40 L. D. 228]

CIRCULAR No. 46

INSTRUCTIONS RELATING TO CONSTRUCTIVE RESIDENCE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 18, 1911.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Below is quoted the instructions dated August 4, 1911, from the Acting Secretary of the Interior, in regard to constructive residence during the first six months of entries:

> In the matter of proof submitted under the homestead law, it seems that a practice has existed according to entrymen, where residence is begun within six months following the date of the entry, credit for residence beginning with the date of the entry. The result is that where a party takes up an actual residence just at the expiration of the six months following the making of his entry, he is accorded a constructive residence for the intervening six months and is thus permitted to secure title on proof of residence for a period of only four years and six months.
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> There is clearly no statutory authority recognizing the period of constructive residence referred to. On the contrary, the statute is specific in requiring five years' residence. By section 2291 of the Revised Statutes it is provided that—
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> "No certificate, however, shall be given, or patent issued therefore, until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death, proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law. That the proof of residence, occupation, or cultivation, the affidavit of nonalienation, and the oath of allegiance, required to be made by section twenty-two hundred and ninety-one of the Revised Statutes, may be made before the judge, or, in his absence, before the clerk, of any court of record of the county and State, or district and territory, in which the lands are situated; and if said lands are situated in any unorganized county, such proof may be

made in a similar manner in any adjacent county in said State or Territory; and the proof, affidavit, and oath, when so made, and duly subscribed, shall have the same force and effect as if made before the register or receiver of the proper land-district; and the same shall be transmitted by such judge, or the clerk of his court, to the register and the receiver, with the fee and charges allowed by law to him; and the register and the receiver shall be entitled to the same fees for examining and approving said testimony as are now allowed by law for taking the same. That if any witness making such proof, or the said applicant making such affidavit or oath, swears falsely as to any material matter contained in said proof, affidavits, or oaths, the said false swearing being willful and corrupt, he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register."

Thereunder a homestead claim could only be initiated by entry, and, as a consequence, it is provided that no patent shall issue until the expiration of five years from date of the entry, and therein it is also plainly required that the party seeking to secure patent shall prove residence for the term of five years.

By the third section of the act of May 14, 1880 (21 Stat., 141), it was provided:

"That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States land office as is now allowed to settlers under the preemption laws to put their claims on record, and his right shall relate back to the date of settlement, the same as if he settled under the preemption laws."

By this section for the first time the entryman's right was made to relate back to the time of his settlement, and while a party can now claim credit for a period of residence preceding the allowance of his entry, yet the 5-year period of residence required by the homestead law is in nowise affected thereby.

The practice of according credit for constructive residence covering the period of six months following the allowance of the entry is, perhaps, due to an erroneous interpretation of section 2297 of the Revised Statutes, by which section it is provided that on proof to the satisfaction of the register and receiver that a person had actually changed his residence or abandoned the land covered by his homestead entry for more than six months at any one time, then, in that event, the land so entered shall revert to the Government. While said section may protect a homesteader from contest for abandonment for a period of six months following the allowance of his entry, it is clearly not authority for according the entryman credit for constructive residence during that period.

After most careful and mature consideration of this matter I feel it my duty to disregard the erroneous practice heretofore obtaining in your office and to direct that you exact of homestead entryman proof of residence for the full period of five years, as required by the statute, before the same can be approved as a basis for the issuance of patent thereon. Because of the long practice heretofore prevailing, I believe it right and proper to give ample time for notice of the contemplated change before putting the same into effect. I have, therefore, to advise you that in all instances where ordinary final proof is submitted under the homestead laws on or after the 1st day of December next, the law as above interpreted be followed.

You will cause all registers and receivers to be immediately advised hereof.

Very respectfully,

Samuel Adams, *Acting Secretary.*

You are directed to carefully examine the above instructions, and you will be strictly governed thereby.

Very respectfully,

S. V. Proudfit, *Assistant Commissioner.*

CIRCULAR No. 47.[3]

INSTRUCTIONS RELATIVE TO RESIDENCE WHILE THE LAND IS COVERED BY A PREEXISTING ENTRY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 21, 1911.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Under instructions from the department dated September 24, 1910 (39 L. D. 230), it was held that (syllabus)—"Credit for residence will not be allowed during the time the land is not subject to entry by the person maintaining residence."

The above instructions were modified by the department under date of May 17, 1911; in the ex parte homestead case of Martha Sullivan, formerly Martha Feigum (unpublished), Lemmon series 020673, wherein it was held that the instructions of September 24, 1910, should not be considered retroactive so as to defeat proof which was offered and accepted in accordance with the practice theretofore prevailing.

The instructions in question were further modified by the department under date of August 7, 1911, in a letter to this office, wherein it is held that a contestant who established his residence and also filed his contest prior to September 24, 1910, and maintained his residence, may receive credit for the time he resided upon the land before the cancellation of the entry which he contested.

You will exercise care in adjudicating claims that are governed by the above instructions.

Very respectfully,

S. V. PROUDFIT, *Acting Commissioner.*

[Reported, 40 L. D. 526]

CIRCULAR No. 94 [4]

ENLARGED HOMESTEADS—ACT OF FEBRUARY 19, 1909 (35 STAT. 639), AND JUNE 17, 1910 (36 STAT. 531)

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 2, 1912.

Registers and Receivers, United States Land Offices, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

GENTLEMEN: Under date of March 22, 1912, the following instructions were issued by the department to this office:

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I have your informal memorandum dated March 2, 1912, submitted in connection with a letter prepared in your office for my signature (P. R. S. 1071), addressed to Hon. Charles N. Pray, House of Representatives, the memorandum being in full as follows:

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[3] Modified by Circular No. 309, p. 557.
[4] See Circulars Nos. 388, p. 563, and 746, p. 584.

> It is now held by the General Land Office that in cases such as are discussed in the accompanying letter an entry under the enlarged homestead act for the full area of 320 acres may be allowed when the deficit in area of the former perfected entry, under section 2289, Revised Statutes, was such as would entitle the entryman, under the rule of approximation, to make an additional entry under section 6 of the act of March 2, 1889 (25 Stat. 854), of a legal subdivision of 40 acres.

Differently stated, reference being had to the aforesaid draft of letter, this is the equivalent of saying that it is now held as a rule of administration in the General Land Office that in cases where a homestead entry has been allowed and perfected, under section 2289 of the Revised Statutes, for a quantity of land less than 160 acres, the entryman of the perfected homestead may make further or additional entry for 320 acres of land under the enlarged homestead act of February 19, 1909 (35 Stat. 639), in all cases where such deficiency would entitle him to make an additional entry under section 6 of the act of March 2, 1889, for 40 acres of land.

That this is an erroneous view of the law seems clear. The enlarged homestead act permits the entry of 320 acres or less of land by any person "who is a qualified entryman under the homestead laws of the United States." Section 6 of said act of March 2, 1889, qualified a person who has entered "a quantity of land less than 160 acres," and who is otherwise within its provisions, to enter under the homestead laws "so much additional land as added to the quantity previously so entered by him shall not exceed 160 acres." This does not restore such person to the full qualifications of a homestead entryman, but confers a special and limited privilege—limited to the right to make an additional entry for lands of area to be measured by the difference in acreage between 160 acres, the full homestead right given by section 2289 of the Revised Statutes, and the number of acres actually entered thereunder. In other words, the right granted by the act of March 2, 1889, is the right to enter additional land in amount limited to meet the deficiency existing between that originally entered under the homestead laws and 160 acres. The rule of approximation for administrative convenience may in actual practice either enlarge or reduce this right, but this does not affect the construction of the statute.

So the right of additional entry given by the act of March 2, 1889, is necessarily confined by its terms to an acreage wholly inconsistent with the theory that 320 acres may be entered under the enlarged homestead act. Nothing in the enlarged homestead act precludes the exercise of such right of additional entry within the area designated for entry under that act, but the grant of additional right is not thereby enlarged as to such cases. It is such right only as might be exercised elsewhere upon the public domain of the United States subject to homestead entry.

This question was presented in a somewhat different form in the case of ex parte Saavi Storaasli, decided by this department July 18, 1911 (40 L. D. 193). That case involved the right of Storaasli to make an entry of 320 acres or to retain an entry of 160 acres of land he had been allowed to make under the enlarged homestead act. It appeared that he had theretofore made and perfected an entry under section 2289 of the Revised Statutes for 157.33 acres, and he maintained his claim of right to make the enlarged homestead upon the ground that he was in that behalf a qualified entryman by reason of the deficiency of 2.67 acres of his original homestead and consequent additional entry privilege accorded by the act of March 2, 1889. That claim was denied upon the ground that—

> The fact that the land thus patented lacked a little more than 2 acres of making 160 acres did not give him the status of a qualified homestead entryman or the right to enter under the enlarged homestead act an additional 320 acres of land.

It was not intended by this to say, even inferentially, that the case would have been different if the deficiency in the original entry had been large enough under the act of March 2, 1889, as administered, to entitle him to an additional homestead entry for 40 acres of land. That case was decided upon its own facts. The discussion was confined to such facts, and nothing found therein justifies the rule which you say now obtains in your office with reference to this question.

I have to direct that in the further administration of the enlarged homestead act your office conform to the views herein expressed.

Very respectfully,

SAMUEL ADAMS, *First Assistant Secretary.*

The foregoing instructions supersede any former practice or instructions, and you will be governed accordingly.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved April 2, 1912.

SAMUEL ADAMS, *First Assistant Secretary.*

[Reported, 41 L. D. 292]

CIRCULAR NO. 177

ADDITIONAL HOMESTEAD ENTRIES—SECTION 2, ACT OF APRIL 28, 1904

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 2, 1912.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Referring to circulars of May 20, 1904 (32 L. D. 639), July 27, 1907 (36 L. D. 46), and September 11, 1908 (37 L. D. 160), concerning additional entries under section 2 of the act of April 28, 1904 (33 Stat. 527), the following additional rule is hereby announced:

An applicant to make entry under this section, in each case wherein final (not commutation) proof upon the original entry has theretofore been made, will not be required to make further proof of compliance with law as to residence and cultivation as to the additional entry, but the applicant will be required to begin, within twenty days from the filing of his application, publication of notice thereof, at his own expense, in a newspaper to be designated by the register as of general circulation in the vicinity of the land, and to be the nearest thereto. Such publication must cover a period of 30 days, during which time similar notice of the application must be posted in the local land office. The notice must describe the land included in and give the date of the application, and state that the purpose thereof is to allow all persons claiming the land adversely or desiring to show it to be mineral in character an opportunity to file objection to the application with the local land officers for the land district in which the land is situate, and to establish their interest therein or the mineral character thereof.

In cases where the additional entry is made prior to the publication of notice of intention to submit proof upon the original entry, and proof upon both entries is made at the same time, both the original and additional entries must be described in the published notice of intention to submit proof and in the notice posted in the local land office.

In cases where proof is submitted upon the original and additional entries separately, the published and posted notices usual in homestead cases will be required.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

SAMUEL ADAMS, *Acting Secretary.*

[Reported, 42 L. D. 73]

CIRCULAR NO. 227

SETTLEMENT PRIOR TO JUNE 6, 1912—PROOF UNDER OLD LAW—ACT OF MARCH 4, 1913

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 3, 1913.

Registers and receivers, United States Land Offices:

Your attention is directed to the following provision in the deficiency act of March 4, 1913 (37 Stat. 912, 925).

> That any person entitled to enter lands under the homestead laws, who may have established residence upon unsurveyed lands (which were subject to homestead entry) prior to the passage and approval of the act of June sixth, nineteen hundred and twelve, entitled "An act to amend section twenty-two hundred and ninety-one and section twenty-two hundred and ninety-seven of the Revised Statutes relating to homesteads," may perfect his proof for such lands under said act of June sixth, nineteen hundred and twelve, or under the law existing at the time of the establishment of such residence, as he may elect, such election to be signified to the Department of the Interior in accordance with rules and regulations to be prescribed by the Secretary.

The effect of this legislation is to confer upon those qualified to make homestead entry, who, prior to June 6, 1912, settled upon unsurveyed public lands of the character subject to such entry, the rights conferred by the act of June 6, 1912 (37 Stat. 123), upon those who, on that date, had unperfected entries of record. There is nothing in the act that modifies or changes existing law, with reference to the timely assertion of settlement claims after the filing of the plat of survey in the local office. Entries entitled to the benefits of the act under consideration will, when made, be adjudicated as provided by the circular of February 13, 1913 (41 L. D. 479),[a] with reference to homestead entries made prior to June 6, 1912.

Where a proof heretofore submitted upon an entry, made since June 6, 1912, shows settlement to have been made upon unsurveyed lands prior to that date, but has been rejected by you for failure to show the cultivation required by said act of June 6, 1912, you will, if the papers are still in your office, reconsider the case with a view to possible acceptance of the proof under the old law.

Respectfully,

Fred Dennett, *Commissioner.*

Approved.

Lewis C. Laylin, *Assistant Secretary.*

[Reported, 42 L. D. 224]

Circular No. 254

REVISED REGULATIONS UNDER THE KINKAID ACTS

Department of the Interior,
General Land Office,
Washington, D. C., July 17 1913.[5]

Registers and Receivers, United States Land Offices.

Sirs: Section 7 of the act of Congress approved May 29, 1908 (35 Stat. 465), amended section 2 of the act of April 28, 1904 (33 Stat. 547), commonly known as the Kinkaid Act, to read as follows:

> Sec. 2. That entrymen under the homestead laws of the United States within the territory above described who own and occupy the lands heretofore entered by them may, under the provisions of this act and subject to its conditions, enter other lands contiguous to their said homestead entry, which shall not, with the land so already entered, owned, and occupied, exceed in the aggregate six hundred and forty acres; and residence continued and improvements made upon the original homestead, subsequent to the making of additional entry, shall be accepted as equivalent to actual residence and improvements made upon the additional land so entered, but final entry shall not be allowed of such additional land until five years after first entering the same, except in favor of entrymen entitled to credit for military service.

This amendment did not affect sections 1 and 3 of the Kinkaid Act, which read as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after sixty days after the approval of this act entries made under the homestead laws in the State of Nebraska west and north of the following line, to wit: Beginning at a point on the boundary line between the States of South Dakota and Nebraska where the first guide meridian west of the sixth principal meridian strikes said boundary; thence running south along said guide meridian to its intersection with the fourth standard parallel north of the base line between the States of Nebraska and Kansas; thence west along said fourth standard parallel to its intersection with the second guide meridian west of the sixth principal meridian; thence south along said guide meridian to its intersection with the

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[a] Circular No. 208 of Feb. 13, 1913 (41 L. D. 479) was superseded by Circular No. 278 of Nov. 1, 1913 (42 L. D. 511). Neither circular is carried in this publication. Later instructions under the three-year homestead law are contained in Circular No. 541, p. 622.

[5] See circular of Apr. 7, 1923, p. 597.

third standard parallel north of the said base line; thence west along said third standard parallel to its intersection with the range line between ranges twenty-five and twenty-six west of the sixth principal meridian; thence south along said line to its intersection with the second standard parallel north of the said base line; thence west on said standard parallel to its intersection with the range line between ranges thirty and thirty-one west; thence south along said line to its intersection with the boundary line between the States of Nebraska and Kansas, shall not exceed in area six hundred and forty acres, and shall be as nearly compact in form as possible, and in no event over two miles in extreme length: *Provided*, That there shall be excluded from the provisions of this act such lands within the territory herein described as in the opinion of the Secretary of the Interior it may be reasonably practicable to irrigate under the national irrigation law, or by private enterprise; and that said Secretary shall, prior to the date above mentioned, designate and exclude from entry under this act the lands, particularly along the North Platte River, which in his opinion it may be possible to irrigate as aforesaid; and shall thereafter, from time to time, open to entry under this act any of the lands so excluded which, upon further investigation, he may conclude can not be practically irrigated in the manner aforesaid.

SEC. 3. That the fees and commissions on all entries under this act shall be uniformly the same as those charged under the present law for a maximum entry at the minimum price. That the commutation provisions of the homestead law shall not apply to entries under this act, and at the time of making final proof the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than one dollar and twenty-five cents per acre for each acre included in his entry: *Provided*, That a former homestead entry shall not be a bar to the entry under the provisiions of this act of a tract which, together with the former entry, shall not exceed six hundred and forty acres: *Provided*, That any former homestead entryman who shall be entitled to an additional entry under section two of this act shall have for ninety days after the passage of this act the preferential right to make additional entry as provided in said section.

All general instruction heretofore issued under this act and the supplemental act of March 2, 1907 (34 Stat. 1224), including the circular of December 18, 1912 (41 L. D. 492), are hereby modified and reissued as follows:

1. It is directed by the law that in that portion of the State of Nebraska lying west and north of the line described therein, upon and after June 28, 1904, except for such lands as might be thereafter and prior to said date excluded under the proviso contained in the first section thereof, homestead entries may be made for and not to exceed 640 acres, the same to be in as nearly a compact form as possible, and must not in any event exceed 2 miles in extreme length.

2. Under the provisions of the second section, a person who within the described territory has made entry prior to May 29, 1908, under the homestead laws of the United States, and who now owns and occupies the lands theretofore entered by him, and is not otherwise disqualified, may make an additional entry of a quantity of land contiguous to his said homestead entry, which, added to the area of the original entry, shall make an aggregate area not to exceed 640 acres; and he will not be required to reside upon the additional land so entered, but residence continued and improvements made upon the original homestead entry subsequent to the making of the additional entry will be accepted as equivalent to actual residence and improvements on the land covered by the additional entry. But residence either upon the original homestead or the additional land entered must be continued for the period of five years from the date of the additional entry, except that entrymen may claim and receive

credit on that period for the length of their military service, not exceeding four years.

3. A person who has a homestead entry upon which final proof has not been submitted, and who makes additional entry under the provisions of section 2 of the act, will be required to submit his final proof on the original entry within the statutory period therefor, and final proof upon the additional entry must also be submitted within the statutory period from date of that entry.

4. Such additional entry must be for contiguous lands, and the tracts embraced therein must be in as compact a form as possible; and the extreme length of the combined entries must not in any event exceed 2 miles.

5. In accepting entries under this act compliance with the requirement thereof as to compactness of form should be determined by the relative location of the vacant and unappropriated lands, rather than by the quality and desirability of the desired tracts.

6. By the first proviso of section 3 any person who made a homestead entry either within the territory above described or elsewhere prior to his application for entry under this act, if no other disqualification exists, will be allowed to make an additional entry for a quantity of land which, added to the area of the land embraced in the former entry, shall not exceed 640 acres, but residence upon and cultivation of the additional land will be required to be made and proved as in ordinary homestead entries. But the application of one who has an existing entry and seeks to make an additional entry under said proviso can not be allowed unless he has either abandoned his former entry or has so perfected his right thereto as to be under no further obligation to reside thereon; and his qualifying status in these and other respects should be clearly set forth in his application.

7. Under said act no bar is interposed to the making of second homesteads for the full area of 640 acres by parties entitled thereto under existing laws, and applications therefor will be considered under the instructions of the respective laws under which they are made.

8. Upon final proof, which may be made after five years and within seven years from date of entry, the entryman must prove affirmatively that he has placed upon the lands entered permanent improvements of the value of not less than $1.25 per acre for each acre, and such proof must also show residence upon and cultivation of the land for the 5-year period as in ordinary homestead entries, but credit for military service may be claimed and given under the supplemental act mentioned above. By the act of June 6, 1912 (37 Stat. 123), the period of residence necessary to be shown in order to entitle a person to patent under the homestead laws is reduced from five to three years, and the period within which a homestead entry may be completed is reduced from seven to five years. For information and instructions under that act reference is made to Circular No. 208, of February 13, 1913.[a]

9. In the making of final proofs the homestead-proof form will be used, modified when necessary in case of additional entries made under the provisions of section 2.

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[a] Circular No. 208 of Feb. 13, 1913 (41 L. D. 479) was superseded by Circular No. 278 of Nov. 1, 1913 (42 L. D. 511). Neither circular is carried in this publication. Later instructions under the three-year homestead law are contained in Circular No. 541, p. 622.

10. It is provided by section 3 that the fees and commissions on all entries under the act shall be uniformly the same as those charged under the present law for a maximum entry at the minimum price, viz: At the time the application is made, $14, and at the time of making final proof, $4, to be payable without regard to the area embraced in the entry.

11. In case that the combined area of the subdivisions selected should, upon applying the rule of approximation thereto, be found to exceed in area the aggregate of 640 acres, the entryman will be required to pay the minimum price per acre for the excess in area.

12. Entries under this act are not subject to the commutation provisions of the homestead law.

13. In the second proviso of section 3 entrymen who had made their entries prior to April 28, 1904, were allowed a preferential right for 90 days thereafter to make the additional entry allowed by section 2 of the law.

14. The supplemental act approved March 2, 1907 (34 Stat. 1224), reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all qualified entrymen who, during the period beginning on the twenty-eighth day of April, nineteen hundred and four, and ending on the twenty-eighth day of June, nineteen hundred and four, made homestead entry in the State of Nebraska within the area affected by an act entitled "An act to amend the homestead laws as to certain unappropriated and unreserved public lands in Nebraska," approved April twenty-eighth, nineteen hundred and four, shall be entitled to all the benefits of said act as if their entries had been made prior or subsequent to the above-mentioned dates, subject to all existing rights.
>
> SEC. 2. That the benefits of military service in the Army or Navy of the United States granted under the homestead laws shall apply to entries made under the aforesaid act approved April twenty-eighth, nineteen hundred and four, and all homestead entries hereafter made within the territory described in the aforesaid act shall be subject to all the provisions thereof.
>
> SEC. 3. That within the territory described in said act approved April twenty-eighth, nineteen hundred and four, it shall be lawful for the Secretary of the Interior to order into market and sell under the provisions of the laws providing for the sale of isolated or disconnected tracts or parcels of land any isolated or disconnected tract not exceeding three quarter sections in area: *Provided,* That not more than three quarter sections shall be sold to any one person.

ISOLATED OR DISCONNECTED TRACTS

GENERAL REGULATIONS

15. The sale of isolated tracts within the area affected by the terms of this act is to be governed by the provisions of the acts of March 2, 1907, section 3 (34 Stat. 1224), and March 28, 1912 (37 Stat. 77), and all sales shall be made in the manner and form hereinafter provided.

16. Applications to have isolated tracts ordered into market must be filed with the register and receiver of the local land office in the district wherein the lands are situated.

17. Applicants must show by their affidavits, corroborated by at least two witnesses, that the land contains no salines, coal, or other minerals; the amount, kind, and value of timber or stone thereon, if any; whether the land is occupied, and if so the nature of the occupancy; for what purpose the land is chiefly valuable; why it is

desired that same be sold; that applicant desires to purchase the land for his own individual use and actual occupation and not for speculative purposes, and that he has not heretofore purchased, under section 2455, Revised Statutes, or the amendments thereto, isolated tracts the area of which, when added to the area now applied for, will exceed approximately 480 acres, and that he is a citizen of the United States. If applicant has heretofore purchased lands under the provisions of the acts relating to isolated tracts, same must be described in the application by subdivision, section, township, and range.

18. The affidavits of applicants to have isolated tracts ordered into market, and of their corroborating witnesses, may be executed before any officer having a seal and authorized to administer oaths in the county or land district in which the tracts described in the application are situated.

19. The officer before whom such affidavits are executed will cause each applicant and his witnesses to fully answer the questions contained upon the accompanying form and, after the answers to the questions therein contained have been reduced to writing, to sign and swear to same before him.

20. No sale will be authorized upon the application of a person who has purchased, under section 2455, Revised Statutes, or the amendments thereto, any lands the area of which, when added to the area applied for, shall exceed approximately 480 acres.

21. Only one tract may be included in an application for sale, and no tract exceeding approximately 480 acres in area will be ordered into the market.

22. No tract of land will be deemed isolated and ordered into the market unless, at the time application is filed, the said tract has been subject to homestead entry for at least two years after the surrounding lands have been entered, filed upon, or sold by the Government, except in cases where some extraordinary reason is advanced sufficient, in the opinion of the Commissioner of the General Land Office, to warrant waiving this restriction.

23. The local officers will on receipt of applications note same upon the tract books of their office, and if the applications are not properly executed, or not corroborated, they will reject the same, subject to the right of appeal. Applications found to be properly executed and corroborated will be disposed of as follows:

(*a*) If all or any portion of the land applied for is not subject to disposition under the provisions of paragraph 22, or by reason of some prior appropriation of the land, the application will be forwarded to the General Land Office with the monthly returns, accompanied by a report as to the status of the land applied for and the surrounding lands, and any other objection to the offering known to the local officers. Upon determining what portion, if any, of the lands applied for should be ordered into the market, the Commissioner of the General Land Office will call upon the local officers and the chief of field division for the report, as next provided for, concerning the value of the land.

(*b*) If all the land applied for is vacant, and not withdrawn or otherwise reserved from such disposition, and the status of the surrounding lands is such that a sale might properly be ordered under paragraph 22, the local officers, after noting the application on their records, will promptly forward the same to the chief of field division for report as to the value of the land and any objection he may wish to interpose to the sale, and the register will make proper notations on his schedule of serial numbers, in the event the application is not returned in time to be forwarded with the returns for the month in which it is filed. Upon receipt of the application from the chief of field division, with his report thereon, the local officers will attach their report as to the status of the land and that surrounding, the value of the land applied for, if they have any knowledge concerning the same, and any objection to the sale known to them, and forward the papers to the General Land Office with the returns for the current month.

24. An application for sale under these instructions will not segregate the land from entry or other disposal, for such lands may be entered at any time prior to the receipt in the local land office of the letter authorizing the sale and its notation of record. Should all of the land applied for be entered or filed upon while the application for sale is in the hands of the chief of field division, the local officers will so advise him and request the return of the application for forwarding to the General Land Office. Likewise should any or all of the land be entered or filed upon while the application for sale is pending before the General Land Office, the local officers will so report by special letter.

25. Upon receipt of letter authorizing the sale, the local officers will at once examine the records to see whether the tract, or any part thereof, has been entered. If the examination of the record shows that all of the tract has been entered or filed upon, the local officers will not promulgate the letter authorizing the sale, but will report the facts to the General Land Office, whereupon the letter authorizing the sale will be revoked. If a part of the land has been entered, they will so report and note on the tract book opposite such portion of the tract as is found to be clear that sale has been authorized, giving the date of the letter. Thereupon the land will be considered segregated for the purpose of sale. The minimum price set by the order for sale should also be noted on the records. In the event no sale is had, the price so noted will be effective as provided by Circular No. 212, dated March 11, 1913.

The local officers will prepare a notice for publication on the form hereinafter given, describing the land found to be unentered and fixing a date for the sale, which date must be far enough in advance to afford ample time for publication of the notice and for the affidavit of the publisher to be filed in the local land office prior to the date of the sale. The register will also designate a newspaper as published nearest to the land described in the notice. The notice will be sent to the applicant with instructions that he must publish the same at his expense in the newspaper designated by the register. Payment for publication must be made by applicant directly to the publisher, and in case the money for publication is transmitted to the receiver he must issue receipt therefor and immediately return the money to the applicant by his official check, with instruction to arrange for the publication of the notice as hereinbefore provided.

If, on the day set for the sale, the affidavit of the publisher, showing proper publication, has not been filed in the local land office, the register and receiver will report that fact to this office and will not proceed with the sale.

26. [b] Notice must be published once a week for 5 consecutive weeks (or 30 consecutive days, if in a daily paper) immediately prior to date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the affidavit of the publisher to be filed in the local land office. The notice must be published in the paper designated by the register as nearest the land described in the application. The register and receiver will cause a similar notice to be posted in the local land office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in the local land office, prior to the date fixed for sale, evidence that publication has been had for the required period, which evidence may consist of the affidavit of the publisher, accompanied by copy of the notice published.

27. At the time and place fixed for the sale the register or receiver will read the notice of sale, and allow all qualified persons an opportunity to bid. Bids may be made through an agent personally present at the sale as well as by the bidder in person. The register or receiver conducting the sale will keep a record showing the names of the bidders and the amount bid by each. Such record will be transmitted to this office with the other papers in the case.

The sale will be kept open for one hour after the time mentioned in the published notice. At the expiration of the hour, and after all bids have been offered, the local officers will declare the sale closed and announce the name of the highest bidder, who will be declared the purchaser, and he must immediately deposit the amount bid by him with the receiver, and within 10 days thereafter furnish evidence of citizenship, nonmineral and nonsaline affidavit, Form 4–062, or nonsaline affidavit, Form 4–062A, as the case may require. Upon receipt of the proof, and payment having been made for the lands, the local officers will issue the proper final papers.

28. No lands will be sold at less than the price fixed by law, nor at less than $1.25 per acre, but a minimum price will be set by the letter ordering the sale, based upon the report of the chief of field division. Should any of the lands offered be not sold, the same will not be regarded as subject to private cash entry (act of March 2, 1889, 25 Stat. 854), but may again be offered for sale in the manner herein provided.

29. After each offering where the lands offered are not sold, the local officers will report by letter to the General Land Office. No report by letter will be made when the offering results in a sale, but the local officers will issue cash papers as in ordinary cash entries, noting thereon the date of the letter authorizing the offering, and report the same in their current monthly returns. With the papers must also be forwarded the affidavit of publisher showing due publication, and the register's certificate of posting. In all cases where no sale is had the land will, in the absence of other objection, become subject to entry or filing at once, without action by this office.

(Act of March 28, 1912, omitted.)

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[b] See instructions of Oct. 19, 1929, p. 1149.

REGULATIONS UNDER FIRST PROVISO TO ACT OF MARCH 28, 1912

The first proviso to the act of March 28, 1912, authorizes the sale of legal subdivisions not exceeding one quarter section, the greater part of which is mountainous or too rough for cultivation, upon the application of any person who owns or holds a valid entry of lands adjoining such tract, and regardless of the fact that such tract may not be actually isolated by the entry or other disposition of surrounding lands. It is left entirely to the discretion of the land department to determine whether a tract shall be sold, and it will not be practicable to prescribe a set of rules governing the conditions which would render a tract susceptible to sale under the proviso. Applications will be disposed of by you in accordance with the "General Regulations," except paragraph 22, which is not applicable, and no tract exceeding 160 acres in area will be ordered into the market under the proviso. Applications may be made upon the form provided (4–008c), and printed herein, properly modified as necessitated by the terms of the proviso. In addition the applicant or applicants must furnish proof of his or their ownership of the whole title in adjoining land, or that he holds a valid entry embracing adjoining land, in connection with which entry he has fully met the requirements of law; also detailed evidence as to the character of the land applied for, the extent to which it is cultivable, and the conditions which render the greater portion unfit for cultivation; also a description of any and all lands theretofore applied for under the proviso or purchased under section 2455 or the amendments thereto. This evidence must consist of an affidavit by the claimant, corroborated by the affidavits of not less than two disinterested persons having actual knowledge of the facts.

No sale will be authorized under the proviso upon the application of a person who has procured one offering thereunder except upon a showing of strong necessity therefor, owing to some peculiar condition which prevented original application for the full area allowed to be sold at one time, 160 acres. And in no event will an application be entertained where the applicant has purchased under section 2455, or the amendments thereto, an area which, when added to the area applied for, shall exceed approximately 160 acres.

In the notices for publication and posting, where sale is authorized under the proviso, you will add after the description of the land, "This tract is ordered into the market on a showing that the greater portion thereof is mountainous or too rough for cultivation."

ISOLATED TRACTS OF COAL LAND

The act of Congress approved April 30, 1912 (37 Stat. 105), provides:

> That * * * unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall * * * be subject * * * to disposition * * * under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so * * * sold, and of the right to prospect for, mine, and remove the same in accordance with the provisions of the act of June twenty-second, nineteen hundred and ten, and such lands shall be subject to all the conditions and limitations of said act.

In administering this act the foregoing regulations should be followed, in so far as they are applicable, and these additional instructions are prescribed:

An application to have coal land offered at public sale must bear across its face the notation provided by paragraph 7 (*a*) of the circular of September 8, 1910 (39 L. D. 179); in the printed and posted notice of sale will appear the statement:

> This land will be sold in accordance with, and subject to, the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

The purchaser's consent to the reservation of the coal in the land to the United States will not be required, but the cash certificate and patent will contain, respectively, the provisions specified in paragraph 7 (*b*) of said circular of September 8, 1910.

In cases where offerings have been had, and sales made, of lands coming within the purview of the act of April 30, 1912, the purchasers may furnish their consent to receive patents, containing the limitation provided by said paragraph 7 (*b*), and, thereupon, the entries may be confirmed, and patents, limited as indicated, may issue.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones, *First Assistant Secretary.*

(Forms omitted.)

[Reported, 42 L. D. 338]

Circular No. 266

COMMUTATION PROOF—CITIZENSHIP

Department of the Interior,
General Land Office,
Washington, August 27, 1913.

Registers and Receivers, United States Land Offices.

Gentlemen: Where commutation proof is submitted, under the original homestead law, in support of a homestead entry made prior to June 6, 1912, or initiated, prior to that date, by settlement on unsurveyed lands subject to homestead entry, it will be sufficient, in the matter of citizenship, if the entryman shows that he has declared his intention to become a citizen of the United States, or is by law given that status.

Paragraph 14, of Circular No. 208, dated February 13, 1913 (41 L. D. 479), and paragraph 36, of Circular No. 224, dated March 26, 1913, are modified accordingly.[c]

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

A. A. Jones, *First Assistant Secretary.*

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[c] See footnote *a*, p. 548 and par. 36 of Circular No. 541, p. 638, which circular superseded Circular No. 224 dated March 26, 1913.

[Reported, 43 L. D. 187]

CIRCULAR No. 309

CREDIT FOR RESIDENCE DURING CONTEST

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 25, 1914.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is invited to the communication printed below, and you will be governed accordingly.

Respectfully,

C. M. BRUCE,
Assistant Commissioner.

MARCH 14, 1914.

The Commissioner of the General Land Office.

SIR: It was stated in departmental instructions of September 24, 1910 (39 L. D. 230), that credit for residence will not be allowed in final proof in support of a homestead entry during the time the land is not subject to entry by the person maintaining the residence. Said instructions were modified August 19, 1911 (40 L. D. 236), so as to allow credit for such residence in cases where a contestant established residence prior to September 24, 1910, and has since maintained such residence and succeeded in procuring cancellation of the entry under contest and made entry in his own behalf following such cancellation.

The question of allowing credit for residence maintained prior to the time when the land has become subject to entry, has arisen in a somewhat different form in a case pending before the department and after very careful consideration it is believed that the instructions of August 19, 1911, supra, should not have limited credit for such residence to persons who had established residence prior to September 24, 1910. The rule is, therefore, redrafted in the form given below, viz:

A contestant who settles upon the land embraced in the entry under contest and maintains residence thereon, may be credited with the full period of such residence where the contested entry is afterwards canceled and the contestant is permitted to make homestead entry.

Very respectfully,

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR No. 340[6]

DIRECTS THE FURNISHING TO CHIEFS OF FIELD DIVISIONS COPY OF ALL PROTESTED PROOFS ON HOMESTEAD AND DESERT ENTRIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 1, 1914.

Registers and Receivers, United States Land Offices.

SIRS: Hereafter, and until further advised, you will furnish to the proper chief of field division a copy of the final proof submitted on all homestead and desert land entries, against which the chief of field division files a protest, or as to which he requests that certificate be withheld pending a field investigation.

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[6] See Circular of Feb. 29, 1928, p. 648.

So far as the proofs which are submitted before the register and receiver are concerned, all that will be necessary will be the making of a carbon copy at the time the proof testimony is given.

As to those proofs which are made before proof-taking officers, other than the register and receiver, it will be necessary that you make a copy thereof, as it is desired that no additional burden or expense for the making of this copy shall be imposed on the claimant.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 343

INDORSEMENTS ON PROOF NOTICES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 3, 1914.

Registers and Receivers, United States Land Offices.

GENTLEMEN: I have to direct that hereafter, as to homestead entries under the acts of February 19, 1909 (35 Stat., 639), and June 17, 1910 (36 Stat. 531), you indorse on the duplicate notice of intention to submit proof which, under the existing regulations, is sent to the proper chief of field division, the act under which the entry is made, and whether same is under section 6 or sections 1 to 5 of the act.

This information is important to field officers in making investigations, and, if furnished in this way, will save them an inspection of local office records which is not always convenient.

Copies of this circular have been furnished chief of field divisions.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 43 L. D. 408]

CIRCULAR No. 354

SECOND HOMESTEAD AND DESERT-LAND ENTRIES—ACT OF SEPTEMBER 5, 1914 (38 STAT 712)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 26, 1914.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress, approved September 5, 1914 (38 Stat. 712), entitled, "An act providing for second homestead and desert-land entries," a copy of which is hereto appended. Said act governs the disposition of every application for second homestead or desert-land entry, where the applicant, at any time before filing same, had made an entry, or entries, of the same character, but failed to perfect same.

2. The question whether the first entry, or entries, were made before or after the passage of the act is entirely immaterial. Moreover, it will be seen that the act imposes upon the Land Department the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911, limiting its benefits to a clearly defined class of persons. In order that there may be uniformity of rulings thereon, no applications will be allowed by the local officers on their own initiative, but all will be forwarded to the General Land Office for consideration.

3. In order that the General Land Office may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper local office an application to enter a specific tract) furnish his affidavit showing the following facts:

(*a*) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township, and range.

(*b*) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and, in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(*c*) With reference to a homestead entry, whether he established residence upon the tract, and, if so, how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and, if so, how long he continued to exercise acts of ownership thereover.

(*d*) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(*e*) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(*f*) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

4. This affidavit must be executed before an officer authorized to administer oaths in homestead cases; that is, the register or receiver of the district where the land is situated, or a United States commissioner, or judge or clerk of a court of record within said district or within the county in which the tract lies. Its statements must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; affidavits of witnesses may be executed before any officer authorized to administer oaths and having an official seal. Appropriate blank forms will be furnished in the near future.

5. If the affidavit of the claimant be not properly executed or be not corroborated by at least one witness, or if both do not appear to bear upon all the points above mentioned, you will call upon the applicant for supplemental evidence or for reexecution of the affidavit, as the case may be. After service of notice of your requirements and the lapse of the proper period, you will forward the application, together with such supplemental papers as may be filed.

6. You will be careful to note on your records the date and hour of the filing of each application, and in transmitting the same to this office make full report and recommendation.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved:

Andrieus A. Jones,
First Assistant Secretary.

(Act omitted.)

Circular No. 360

NATIONAL FORESTS—ENTRIES FOR LANDS PARTLY WITHIN AND PARTLY WITHOUT FOREST LIMITS—CIRCULAR NO. 300 REVOKED

Department of the Interior,
General Land Office,
Washington, November 3, 1914.

Registers and Receivers, United States Land Offices.

Sirs: By Circular No. 300, dated February 12, 1914, addressed to you, you were directed to reject any application to enter a tract of land, a portion of which is restored to homestead entry under the act of June 11, 1906 (34 Stat. 233), and the remainder of which is contiguous thereto but without the national forest limits. This circular was based on the decision in the case of Franklin P. Tingley, decided by the department November 14, 1913.

March 12, 1914, the department, in a letter of instructions to this office in the case of ex parte Nicholas Becker, Lemmon H. E. 028284, held that any entry may be made for a single tract, a portion of which is subject to the restrictions and reservations of the coal-land act of June 22, 1910 (36 Stat. 583), and the remainder of which is free from any coal-land withdrawals. This is based upon the fact that the same amount of cultivation is required in the one case as in the other.

In line with the said decision of March 12, 1914, entries may be allowed for tracts partly within and partly without national forest limits, and the said circular No. 300 is hereby revoked.

It must be understood, however, that an entry of this kind is not subject to commutation proof, in view of the restriction contained in the said act of June 11, 1906, and a person making such an entry thereby waives any right to submit commutation proof.

Very respectfully,

C. M. Bruce, *Acting Commissioner.*

[Reported, 43 L. D. 445]

Circular No. 364

PROOF ON HOMESTEAD ENTRY BY DESERTED WIFE—ACT OF OCTOBER 22, 1914 (38 STAT. 766)

Department of the Interior,
General Land Office,
Washington, November 13, 1914.

Registers and Receivers, United States Land Offices.

Sirs: By act of Congress approved October 22, 1914 (38 Stat. 766), it is provided that where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than one year, she may submit proof (by way of commutation or otherwise), on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband.

2. Upon the wife's filing notice of intention to submit proof, together with an affidavit alleging desertion, as above stated, and all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the register will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] *homestead entryman:*

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No ——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial.

3. Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by affidavit of the person serving the summons, showing its delivery to the entryman. If personal service can not be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary affidavit; proof of such attempted service shall be by affidavit of the person mailing the letters, to which should be attached the postmaster's receipts therefor.

4. Within 30 days after service of summons, the entryman may file his affidavit denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

5. After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the register will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

6. If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final

proof testimony will be taken in accordance with existing regulations. But the register and receiver, for any reason deemed sufficient, may continue the hearing to a later date.

(*a*) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(*b*) All hearings and subsequent proceedings shall be in accord with the rules of practice pertaining to contests.

7. If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

Very respectfully,

D. K. Parrott,
Acting Assistant Commissioner.

Approved.

A. A. Jones,
First Assistant Secretary.

(Act omitted.)

[Reported, 43 L. D. 449]

Circular No. 366

HOMESTEAD FEES—CIRCULAR NO. 80 VACATED

Department of the Interior,
General Land Office,
Washington, November 14, 1914.

Registers and Receivers, United States Land Offices.

Sirs: In view of the departmental decision in Kermode *v.* Dankwardt (42 L. D. 557), Circular No. 80 (40 L. D. 399), is hereby vacated, and in the future where the area embraced in a homestead application is less than 81 acres you will collect a fee of $5 only. If the area applied for is 81 acres or more, the fee to be collected is $10.

Very respectfully,

D. K. Parrott,
Acting Assistant Commissioner.

Approved.

A. A. Jones,
First Assistant Secretary.

[Reported, 43 L. D. 494]

Circular No. 374 [7]

REVISED FORMS FOR FINAL PROOFS ON HOMESTEAD ENTRIES

Department of the Interior,
General Land Office,
Washington, D. C., January 12, 1915.

Registers and Receivers, United States Land Offices.

Sirs: On November 14, 1914, the department approved a revision of Forms 4–369 (testimony of claimant) and 4–369a (testimony of witnesses) for final proofs on homestead entries. A supply of the revised forms is being sent to all district offices.

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[7] See Circulars Nos. 433, p. 413, 807, p. 588, and 847, p. 593.

On and after March 1, 1915, you will not accept proofs made on other forms.

Because of the fact that many proof-taking officers have supplied themselves with the blank forms heretofore in use, you will, until further advised, during the last week of each month, forward to each officer enough of the new forms for the next month's business, the number to be sent to be determined by an actual count of the cases theretofore set before each officer. Under no circumstances should the number be estimated, and you are cautioned to exercise great care in carrying out the above directions.

A copy hereof should be sent to each proof-taking officer in your respective districts.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones,
First Assistant Secretary.

Circular No. 388 [5]

VALIDATION OF ENLARGED HOMESTEAD ENTRIES, ACT OF MARCH 4, 1915 (38 STAT. 1162)

Department of the Interior,
General Land Office,
Washington, March 13, 1915.

Registers and Receivers, United States Land Offices, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, and Wyoming.

Sirs: In order that you may be properly informed, and in view of entries now pending in your offices, which may be validated thereby, your attention is directed to the act of Congress approved March 4, 1915 (38 Stat. 1162), which, after the enacting clause, reads as follows:

> That all pending homestead entries made in good faith prior to January 1, 1914, under the provisions of the enlarged homestead laws, by persons who before making such enlarged homestead entry had acquired title to land under the homestead laws and therefore were not qualified to make an enlarged homestead entry, be, and the same are hereby, validated, if in all other respects regular, in all cases where the original homestead entry was for less than 160 acres of land.

Very respectfully,

Clay Tallman, *Commissioner.*

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[5] See Circular No. 746, p. 584.

CIRCULAR No. 394 [9]

CERTIFICATE FROM INDIAN OFFICE REQUIRED OF INDIAN HOMESTEAD ENTRYMEN

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 29, 1915.

Registers and Receivers, United States Land Offices.

SIRS: The regulations of this office require that no Indian allotment applications be allowed unless a certificate from the Commissioner of Indian Affairs that the applicant is entitled, under the fourth section of the act of February 8, 1887 (24 Stat. 388), to such allotment is filed by or for the applicant.

In conformity with this practice, you will hereafter require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

When such an application is presented without this certificate you will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 44 L. D. 66]

CIRCULAR No. 401

ENLARGED HOMESTEAD ACT—ADDITIONAL ENTRY AFTER PROOF ON THE ORIGINAL—ACT OF MARCH 3, 1915 (38 STAT. 956)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 17, 1915.

Registers and Receivers, United States land offices, Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

SIRS: The act of Congress approved March 3, 1915 (38 Stat. 956), amends sections 3 and 4 of the enlarged homestead acts of February 19, 1909 (35 Stat. 639), and June 17, 1910 (36 Stat. 531), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

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[9] See Circular No. 427, p. 569.

2. The act does not change the law as to additional entries made before submission of proofs on the originals; therefore there is, as to such entries, no alteration in the rules heretofore in force, as explained in the instructions of March 17, 1913 (42 L. D. 345), the substance whereof is embodied in paragraph 47 of the homestead circular of January 2, 1914 (43 L. D. 1).[d] As to entries permitted by the present act, the following instructions are issued:

3. *Who may make entry.*—The act confers the right of entry only upon one who " still owns and occupies the land " first entered; it is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. A statement showing continued ownership and occupancy must be inserted in Form 4–004, in case of applications under this act. It should be observed that no change has been made in the requirement of law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other.

4. *Residence.*—The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the five-year or the three-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat. 123).

5. *Cultivation.*—The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under this act. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within five years after the date of the additional entry.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

[Act omitted.]

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[d] Circular of Jan. 2, 1914, has been superseded by Circular of July 16, 1926 (No. 541) See par. 47, p. 643.

[Reported, 44 L. D. 68]

Circular No. 402.[10]

(As amended April 11, 1916)

ENLARGED HOMESTEAD ACT—PETITIONS FOR DESIGNATION—ACT OF MARCH 4, 1915 (38 STAT. 1162)

Department of the Interior,
General Land Office,
Washington, D. C., April 17, 1915.

Registers and Receivers, United States Land Offices, Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Sirs: Section 1 of the act of Congress approved March 4, 1915 (38 Stat. 1162), copy of which is appended, confers a preference right of entry under sections 1 to 5, or under section 6, of either of the enlarged homestead acts upon a qualified person, pursuant to whose petition land is designated as subject thereto. These instructions are explanatory of the act and of the procedure prescribed for its execution.

2. The act applies to cases where the party is seeking to make an original entry and to all cases where he seeks to make additional entry, regardless of the question whether proof has or has not been already submitted on his original filing.

It does not affect the right of any person or persons interested in designation of land to forward to the Director of the United States Geological Survey or to the Secretary of the Interior a petition therefor.

3. (*a*) Where a preference right under the act is sought there must be filed at the proper local land office the usual application for entry, original or additional, as the case may be, executed by the applicant and two witnesses, and the fee and commissions must be then paid; it must be accompanied by the applicant's affidavit, executed in duplicate and corroborated by at least two witnesses, setting forth the character of the land involved—both tracts, if additional entry is sought.

(*b*) This affidavit, which will be entitled "Petition for Designation," must give the name and post-office address of the applicant and a description by legal subdivisions of all the land involved; in case of additional applications it should give the serial number (or numbers) of the old claim.

(*c*) In case of applications for entry under sections 1 to 5, commonly known as the general provisions, of the enlarged homestead act, the affidavit should set forth fully the conditions governing the irrigability of the land. If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given.

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[10] See Circular No. 736, p. 582.

The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon, such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated.

The affidavit should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

(*d*) In cases of applications for entry under section 6 of the enlarged homestead acts, applicable to Utah and Idaho, the affidavit should give information regarding the possibility of securing on the land a supply of water suitable for domestic use. If there are on the tract, or in its immediate vicinity springs or streams which would furnish such supply, a complete statement should be made as to the quantity, quality, and availability of the water. A statement should also be made as to the location, depth, elevation of water plane relative to the surface, depth at which water was first obtained, and other pertinent facts as to wells situated either in the vicinity of the tract or nearest thereto, and as to the relation of the tract thereto. If unsuccessful attempts have been made to secure a domestic water supply on the land itself, the facts concerning them should be set forth.

If the tract has not theretofore been designated by the Secretary of the Interior under sections 1 to 5 of the act, applicants for designation under section 6 thereof should, in addition to the above, furnish the information required of applicants for designation under said sections 1 to 5, as hereinabove explained.

(*e*) The filing of an affidavit, as above indicated, will not be conclusive as to the character of the land therein described, and the applicant may be required by the Geological Survey to furnish additional evidence with regard thereto. Moreover, the filing of an application and petition does not give the party the right to fence the land or place other improvements thereon, and the erection of improvements will not confer upon him any right to equitable consideration of the application in the event the land is found not to be of the character contemplated by those provisions of the enlarged homestead act under which the claim is filed.

4. The applications for entry (when regular) will be suspended by you and retained in your office, but you will promptly forward both copies of the affidavit by special letter to this office, which will transmit one to the United States Geological Survey for consideration. Where defects appear in the papers—especially (as to additional entries) failure to refer in the affidavit to the tract originally entered—you will call for supplemental evidence, as in other cases; if

this is not furnished, you will forward all the papers to this office for consideration, making proper recommendations in connection therewith.

5. No other appropriation of the land will be allowed before the application has been finally disposed of. However, later applications therefor should be received and suspended. If withdrawal of an application under the act of March 4, 1915, be filed, you will promptly notify this office thereof, inviting special attention to the pendency of the petition for designation, and will close the case on your records. Prior to final action on the application the party's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

6. [As amended April 11, 1916—Circular No. 469.] Where designation is made of all the land involved you will, when it becomes effective, place the entry of record.

Where the Geological Survey advises this office that it is unable to classify the land, or some part thereof, as subject to designation, this office will, through the proper local land office, furnish the applicant with a copy of the survey's report, and will allow him 30 days within which to file response. At the applicant's option, he may either appeal from the finding to the Secretary of the Interior, alleging errors of law, or he may present further showing as to the facts, accompanied by such evidence as is desired, tending to disprove the adverse conclusion reached by the survey.

Such appeal or response, if filed, will be forwarded by you to this office, whence it will be transmitted to the Geological Survey for further consideration. That bureau will consider the evidence submitted and, if it warrants such action, will recommend designation of the land; or, if its conclusion be still adverse, will transmit the record to the Secretary with report. The case will thereafter be considered as having the status of an appeal pending before the Secretary's office.

In cases where the applicant fails to furnish a showing, or to appeal from the order of this office requiring him to furnish it, within the 30 days limited, or where the Secretary refuses designation, final action will be taken, and the case closed, by this office, on the basis of the designations which may have been theretofore made.

7. The benefits of the act do not extend to a person who has filed a petition for designation elsewhere than at the local land office of the district where the land is situated, nor to one whose petition was filed at the place indicated, unless accompanied by application for entry of the land. In every case where there is now pending an application for original or additional entry under the enlarged homestead act, not allowable because part or all of the land has not been designated, you will promptly advise the applicant of the passage of the act of March 4, 1915, forwarding a copy of these instructions, and allowing him 30 days after notice within which to furnish the required corroborated affidavit in duplicate; if this be done, you will take action as directed in paragraphs 2 to 5 hereof, reporting as to adverse claim, if any there be.

8. Where you have knowledge that a person has filed a petition for designation of land, but no application for entry thereof, you will

advise him of the passage of the act, forwarding him a copy hereof and informing him that he will be obliged to comply with its provisions in order to obtain the preference right provided thereby.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR NO. 427

INDIAN HOMESTEADERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 27, 1915.

Registers and Receivers, United States Land Offices.

SIRS: Certain local land officers having interpreted Circular No. 394, dated March 29, 1915, as requiring all Indians who submit applications to make homestead entry, under authority of the act of July 4, 1884 (23 Stat. 96), or under the general homestead act, to furnish a certificate from the Commissioner of Indian Affairs that the applicant is entitled, as an Indian, to make such entry, you are hereby informed that this certificate should be required only of applicants under the act of July 4, 1884 (23 Stat. 96), from whom no fee or commissions are required.

If an Indian making application under the general homestead act makes affidavit that he is a citizen of the United States, having abandoned his tribal relations and adopted the habits and customs of civilized persons, you will allow such an Indian, if otherwise qualified, to make entry under the regular homestead act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR NO. 466

PROOF-TAKING OFFICERS TO BE NOTIFIED OF DATE SET FOR PROOF

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 25, 1916.

Registers and Receivers, United States Land Offices.

SIRS: Responses made to Circular No. 454 disclose that some offices do not advise proof-taking officers of the date set for the submission of final proof before them, while other offices have issued notices in various ways—some by using card 4–192, others by sending a carbon copy of the notice, others by sending a list with the supply of forms, and others using a form printed at their own expense.

It has come to the attention of this office that much inconvenience has been caused because of the absence from the office of the officer who was advertised to take the proof, he not having been advised of the date set.

In the future, notice should be given the officer named in the notice of the date set, in all cases. The form of the notice is not material, and officers are at liberty to continue any practice now in vogue which conveys the necessary information. Offices which have not adopted any system may use Form 4–192 (card), modified to give the information needed; or, in forwarding a supply of proof blanks, may send a schedule of the proofs set before the officer, or may send a carbon copy of the notice (4–348a).

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 45 L. D. 208]

CIRCULAR No. 486 [11]

ENLARGED HOMESTEAD ACT—ADDITIONAL ENTRIES FOR INCONTIGUOUS LANDS—ACT OF JULY 3, 1916 (39 STAT. 344)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 8, 1916.

Registers and Receivers, United States Land Offices, Arizona, California, Colorado, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

SIRS: The act of July 3, 1916 (39 Stat. 344), added a seventh section to the enlarged homestead act, to permit an additional entry for land not contiguous to the tract originally entered—after submission of proof on the original entry. It reads as follows:

> That the act entitled "An act to provide for an enlarged homestead," approved February 19, 1909, be amended by adding thereto an additional section to be known as section 7:
>
> "SEC. 7. That any person who has made or shall make homestead entry of less than three hundred and twenty acres of lands of the character herein described, and who shall have submitted final proof thereon, shall have the right to enter public lands subject to the provisions of this act, not contiguous to his first entry, which shall not with the original entry exceed three hundred and twenty acres: *Provided*, That the land originally entered and that covered by the additional entry shall first have been designated as subject to this act, as provided by section one thereof: *Provided further*, that in no case shall patent issue for the land covered by such additional entry until the person making same shall have actually and in conformity with the homestead laws resided upon and cultivated the lands so additionally entered, and otherwise complied with such laws, except that where the land embraced in the additional entry is located not exceeding twenty miles from the land embraced in the original entry no residence shall be required on such additional

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[11] Amended by Circular No. 770, p. 586.

entry if the entryman is residing on his former entry: *And provided further*, That this section shall not be construed as affecting any rights as to location of soldiers' additional homesteads under section twenty-three hundred and six of the Revised Statutes."

2. This act has no application unless the first entry was made in one of the States where the enlarged homestead act is in force, as listed above, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incontiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

3. The only qualifications required of an applicant under this act are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

4. It is not necessary that any of the land be designated under the enlarged homestead act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for designation of the undesignated land, as provided by the act of March 4, 1915 (38 Stat. 1162), and separate petitions must be filed for the different tracts if both be undesignated. These will be forwarded by the local officers, as directed by the regulations under said act.

Where an original tract, outside of the land district, is said to have been designated you will at once make inquiry of the proper office. If the response be satisfactory, action will be taken accordingly; but, if part or all of the original tract appears not to have been designated, the applicant will be allowed 30 days within which to file a petition for its designation.

5. On the notice of allowance of an application, and on the application itself, you will stamp, "This additional entry is within 20 miles of the original," or that it is not, as the fact may be. To ascertain whether two tracts are within 20 miles of each other, the shortest distance in a straight line between the nearest points will be considered as controlling.

6. There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

In the proof, to be submitted within five years after the date of the additional entry, there must be shown residence on the additional tract—or on the original, if permitted under the 20-mile exception above explained—for not less than three years, subject to the privilege of being absent five months in each year, as provided by the three-year homestead act; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry and of not less than one-eighth of its area during the third year and until submission of proof. Credit for military service will be allowed as in other cases.[12]

7. As in other cases, a petition for designation, filed in connection with an entry under this act, must consist of an affidavit—executed in duplicate by the applicant and at least two witnesses—setting forth a description by legal subdivisions of all the land involved, its character, and the conditions governing the irrigability of both tracts.

If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land, should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the facts may be advantageously presented thereby.

Where the Geological Survey advises this office that it is unable to classify the land, or some part thereof, as subject to designation, this office will, through the proper local land office, furnish the applicant with a copy of the Survey's report, and will allow him 30 days within which to file response. At the applicant's option he may either appeal from the findings to the Secretary of the Interior, alleging errors of law, or he may present further showing as to the facts, accompanied by such evidence as is desired, tending to disprove the adverse conclusion reached by the Survey. Such appeal or response, if filed, will be forwarded by you to this office, whence it will be transmitted to the Geological Survey for further consideration. That bureau will consider the evidence submitted and, if it warrants such action, will recommend designation of the land; or if its conclusion be still adverse, will transmit the record to the Secretary with report. The case will thereafter be considered as having the status of an appeal pending before the Secretary's office. In cases where the applicant fails to furnish a showing, or to appeal from the order of this office requiring him to furnish it within the 30 days limited, or where the Secretary refuses designation, final action will be taken and the case closed by this office on the basis of the designations which may have been theretofore made.

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[12] See amendment, p. 586.

8. The act does not apply in any manner to the State of Idaho. Therefore entries can not be made thereunder in that State.

9. The provisions of this act do not apply to entries under section 6 of the enlarged homestead act.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

[Reported, 45 L. D. 320]

CIRCULAR NO. 492

LEAVE OF ABSENCE TO HOMESTEAD SETTLERS ON UNSURVEYED LANDS—ACT OF JULY 3, 1916 (39 STAT. 341)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 27, 1916.

Registers and Receivers, United States Land Offices.

SIRS: The act of July 3, 1916 (39 Stat. 341), provides as follows:

> That any qualified person who has heretofore or shall hereafter in good faith make settlement upon and improve unsurveyed, unreserved, unappropriated public lands of the United States with intention, upon survey, of entering same under the homestead laws shall be entitled to a leave of absence in one of two periods not exceeding in the aggregate five months in each year after establishment of residence: *Provided,* That he shall have plainly marked on the ground the exterior boundaries of the lands claimed and have filed in the local land office notice of the approximate location of the lands settled upon and claimed, of the period of intended absence, and that he shall upon the termination of the absence and his return to the land file notice thereof in the local land office.

2. You will give the current serial numbers to notices filed under this act, and make due record of them on your serial number registers, plainly noting at the top of the page that no entry has been made. You will not make any note of such papers on your tract books, even though the description of the land be given therein by section, township, range, and legal subdivisions. The notices, both of leaving and of returning to the land will be forwarded with your monthly returns. When a township plat of survey is filed in your office, you will be careful to assign to applications for entry of lands therein the same serial numbers which have been already given the notices of absences under this act.

3. A settler upon unsurveyed, unreserved, and unappropriated public land is entitled to one or two leaves of absence during each residence year, aggregating not more than five months in each year, after establishing of residence, in the same manner and upon the same conditions as persons having entries of record. If he has returned after an absence of less than five months and filed notice of his return, he may, without any intervening residence, again absent himself—pursuant to new notice—for the remaining part of five months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than five months. The notices will follow the forms appended to these instructions.

4. The act does not authorize the filing of a notice of a settlement claim except as included in a notice of absence from the land; unless the paper tendered shows the beginning or ending of an absence, you will decline to receive it.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved:

ANDRIEUS A. JONES,
First Assistant Secretary.

(Forms omitted.)

CIRCULAR No. 508

THE INITIALS OF THE PERSON WHO PREPARES AN AFFIDAVIT TO BE INDORSED ON THE PAPER

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 4, 1916.

Registers and Receivers, United States Land Offices.

SIRS: For reasons not necessary here to relate, the initials of the person who prepares an affidavit or takes the testimony in final proof on an entry should be written on the upper left-hand corner of the first page of the affidavit or proof testimony, preceded by " Prepared by " or " Taken by," as may be appropriate.

It is expected that the foregoing will be strictly complied with as to all affidavits prepared and proofs taken at your offices. While a compliance therewith by other offices is urged, you will not reject any affidavit or final proof merely because no initials appear in the place indicated.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 45 L. D. 585]

Circular No. 517

LAND IN CERTAIN COUNTIES IN NORTH DAKOTA, SOUTH DAKOTA, AND KANSAS NOT SUBJECT TO DESIGNATION UNDER THE ENLARGED HOMESTEAD ACT

Department of the Interior,
General Land Office,
Washington, D. C., December 26, 1916.

Registers and Receivers, United States Land Offices, Arizona, California, Colorado, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

Sirs: Under date of December 21, 1916, the Secretary of the Interior issued the following order:

> As a result of the passage of the act of July 3, 1916 (39 Stat. 344), it has become possible for applicants to make additional homestead entries in the arid portions of the States subject to the act, based on original homesteads situated in the more humid eastern portions of North Dakota, South Dakota, and Kansas.
>
> The Director of the Geological Survey advises that in his opinion lands in the counties in those States hereinafter listed can not properly be regarded as arid lands subject to the operation of the enlarged homestead act. You are accordingly directed to advise local land officers in the States mentioned that lands in these counties will not be designated under the act of February 19, 1909 (35 Stat. 639), and that all entries and applications to make entry, the allowance of which would be conditional upon the designation of lands in these counties, should accordingly be rejected.
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> The list of counties is as follows:
>
> *North Dakota.*—Barnes, Benson, Bottineau, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, Lamoure, McHenry, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, Wells.
>
> *South Dakota.*—Aurora, Beadle, Bonhomme, Brookings, Brown, Brule, Buffalo, Charles Mix, Clark, Clay, Codington, Davison, Day, Deuel, Douglas, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hutchinson, Hyde, Jerauld, Kingsbury, Lake, Lincoln, McCook, McPherson, Marshall, Miner, Minnehaha, Moody, Roberts, Sanborn, Spink, Turner, Union, Yankton.
>
> *Kansas.*—Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Butler, Chase, Chautauqua, Cherokee, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Dickinson, Doniphan, Douglas, Edwards, Elk, Ellis, Ellsworth, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Jefferson, Jewell, Johnson, Kingman, Kiowa, Labette, Leavenworth, Lincoln, Linn, Lyon, McPherson, Marion, Marshall, Miami, Mitchell, Montgomery, Morris, Nemaha, Neosho, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Reno, Riley, Rooks, Rush, Russell, Saline, Sedgwick, Shawnee, Smith, Stafford, Sumner, Wabaunsee, Washington, Wilson, Woodson, Wyandotte, Republic, Rice.

Inclose a copy hereof with all notices of rejection hereunder.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 46 L. D. 57]

CIRCULAR NO. 535

ADDITIONAL ENTRIES—ACT OF FEBRUARY 20, 1917 (39 STAT. 925)—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 19, 1917.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress of February 20, 1917 (39 Stat. 925), which provides:

> That any person otherwise qualified who has obtained title under the homestead laws to less than one quarter section of land may make entry and obtain title under the provisions of the act entitled "An act to provide for enlarged homesteads," approved February nineteenth, nineteen hundred and nine, and an act of June seventeenth, nineteen hundred and ten, entitled "An act to provide for an enlarged homestead," for such an area of public land as will, when one-half of such area is added to the area of the lands to which he has already obtained title, not exceed one quarter section: *Provided,* That this act shall not be construed to apply to soldiers' additional homestead entries made under section twenty-three hundred and six, United States Revised Statutes, or acts amendatory thereof or supplemental thereto.

2. This act permits an additional entry under the enlarged homestead act to be made for a tract designated as subject thereto, although the land included in the applicant's perfected entry be not thus designated; it is immaterial whether he owns the original tract, and the additional tract may be contiguous thereto or at any distance therefrom.

3. The application must contain a description of all entries theretofore made by the applicant or such data as will serve to identify them.

4. Under section 6 of the act of March 2, 1889 (25 Stat. 854), a person who has partially exhausted his homestead right through a perfected entry is entitled to make an additional entry for so much land as will with the area of the completed entry make 160 acres. The present act supplements that legislation by providing that the additional land, if designated under the enlarged-homestead act, shall be estimated at only one-half its actual area in the calculation under the act of March 2, 1889. To illustrate: If the person has obtained title to 40 acres, he may make additional entry for not exceeding 240 acres of enlarged-homestead land, that is, twice 120; if he has had 80 acres, he may still take 160 acres of such land; if he has had 120 acres, he may now take an additional 80 acres.

5. In connection with an application pursuant to the provisions of this act, a petition for designation of the land sought may be filed as provided in other cases of applications under the enlarged-homestead act, and the proceedings with relation to the application and petition will be as in other cases.

6. Where an application is filed for additional entry under either section 3 or section 7 of the enlarged-homestead act, and the Secretary of the Interior refuses to designate thereunder the tract included in the original perfected entry, the application may be allowed for so much of the land sought as the claimant is entitled to enter

under this act, provided said land be designated as subject to the enlarged-homestead act.

7. In proof on an entry allowed pursuant to the provisions of the present act there must be shown the existence of a dwelling house upon the land entered and the usual residence and cultivation. Residence must be for not less than three years, subject to the privilege of being absent five months in each year, in two periods if desired. There must be cultivation of not less than one-sixteenth of the land entered during the second year after the date of the entry, and not less than one-eighth of its area during the third year and until submission of proof. However, credit for military service will be allowed as in other cases. Proof must be submitted within five years after the date of the entry.

8. The present act does not in anywise affect the right of additional entry under the stock-raising homestead act; under the provisions of that law no additional entry can be made unless the land originally entered has been designated as subject thereto.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 46 L. D. 70]

CIRCULAR No. 540 [13]

SECOND HOMESTEAD ENTRIES—ACT OF FEBRUARY 20, 1917 (39 STAT. 926)—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 24, 1917.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress approved February 20, 1917 (39 Stat. 926), which provides:

> That from and after the passage of this act any person who has heretofore entered under the homestead laws, and paid a price equivalent to or greater than $4 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made: *Provided,* That the provisions of this act shall not apply to any person who has failed to pay the full price for his former entry, or whose former entry was canceled for fraud.

2. A person claiming the right of second homestead entry, pursuant to the provisions of this act, must furnish a description of the land included in his perfected entry or data from which it can be identified; and he must state that he paid $4 or more per acre for the tract; but it is not necessary that he name the precise price paid.

3. A second entry is not allowable unless the first entry was made prior to February 20, 1917, and unless satisfactory final proof has

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[13] See Circular No. 990, p. 621.

been submitted thereon and the entire price of the land included therein has been paid prior to the date of the application for second entry.

4. The act has no application if the first entry be canceled. Such cases will be governed by the general statutes allowing second entries.

5. If the original tract lies within your district, you will pass upon the application and will allow the entry if such action be proper; if said tract be not in your district, you will forward the application to this office for consideration.

6. A person who is entitled to the benefits of this act may at his option make second entry either under the general homestead law, under the enlarged homestead act, or under the stock-raising homestead act. Compliance with the law must be shown as though it were an original entry.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 46 L. D. 255]

Circular No. 560

ADDITIONAL ENTRIES—APPLICATION BY WIDOW, HEIRS, OR DEVISEE OF DECEASED HOMESTEADER NOT TO BE ALLOWED

Department of the Interior,
General Land Office,
Washington, August 4, 1917.

Registers and Receivers, United States Land Offices.

Sirs: By decision rendered May 8, 1917, in the case of Timothy Sullivan, guardian of Juanita Elsenpeter, the Secretary of the Interior overruled the department's decisions in the cases of Lillie E. Stirling (39 L. D. 346), Susan A. Davis (40 L. D. 573), and Bertha M. Birkland (45 L. D. 104), in which it had been held that under certain circumstances the widow or heirs of a homestead entryman might make entry, under the enlarged homestead act, additional to that made by him. This overruled also the decision in Samuel T. B. Himes (43 L. D. 388), wherein it had been held that the widow or heirs might make additional entry under section 2 of the act of April 28, 1904 (33 Stat. 527). Following the said construction of the law, you are instructed:

(1) You will reject, subject to the usual right of appeal, all applications filed by the widow, heirs, or devisee of a homesteader to make entry additional to his claim. This order will govern your action not only on applications hereafter filed but on those which are now pending in your office, and it applies to applications under the stock-raising homestead law as well as to those under the acts above referred to. The circular of January 27, 1917,[e] issued under said law, as amended by the circular of March 23, 1917, is modified accordingly.

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[e] Circular of Jan. 27, 1917, as amended, has been superseded by circular of Jan. 2, 1925 (No. 523), p. 603.

(2) Additional entries heretofore allowed in accordance with the prior rulings will be submitted to the board of equitable adjudication for consideration, if they shall first have been perfected by the submission of final proof. Therefore, you will not reject proofs upon such additional entries on the sole ground that they were improperly allowed.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved August 4, 1917.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 47 L. D. 95]

CIRCULAR No. 636

PROLONGED ABSENCES FROM HOMESTEADS ON ACCOUNT OF CLIMATIC CONDITIONS—ACT OF FEBRUARY 25, 1919 (40 STAT. 1153)—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 25, 1919.

Registers and Receivers, United States Land Offices.

SIRS: Under the homestead law, as it has heretofore stood, a homesteader is entitled to a leave of absence in one or two continuous periods not exceeding in the aggregate five months in each year after establishing residence, being required to file notice at the beginning and end of each period. It is provided that in case of commutation 14 months' actual residence must be shown, no credit being allowed for the periods of these allowable absences.

By the act of February 25, 1919 (40 Stat. 1153), the following clause is inserted in the law:

> *Provided*, That the register and receiver of the local land office under rules and regulations made by the Commissioner of the General Land Office may, upon proper showing, upon application of the homesteader, and only for climatic conditions, which makes residence on the homestead for seven months in each year a hardship, reduce the term of residence to not more than six months in each year, over a period of four years, or to not more than five months each year over a period of five years, but the total residence required shall in no event exceed twenty-five months, not less than five of which shall be in each year; proof to be made within five years after entry.

2. An entryman desiring to avail himself of the privilege accorded by this act must, within one year after the allowance of his entry, file in the local land office an application (preferably on the approved form) consisting of his affidavit, corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as seven months in each year, and stating whether he wishes the requirement in his case to be fixed at six months' residence in four successive years or at five months' residence in five successive years. The affidavit of claimant and the witnesses may be executed before any officer authorized to administer oaths and using an official seal. If the showing is satisfactory, you

will promptly forward the application to this office with notation of your allowance thereof, by special letter. If it is not satisfactory, you will reject the application, subject to the usual right of appeal, and all appeals will be promptly forwarded by special letters.

If the application requests a reduction to five months' residence in each year, you may, if proper, grant partial relief; that is, fix the residence period at six months in each year, your decision being subject to review by this office on appeal from your decision, of which the party will be notified with all promptness.

3. Where a homesteader has secured a reduction of the residence requirements to six months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to five months in each of five years.

4. To entitle a homesteader to the benefits of this act, he must show that the climatic conditions in the vicinity of the land entered are ordinarily—not in exceptional years—such as would render it a hardship for him to reside there for a greater part of each year than for five or for six months, as the case may be.

5. Under this provision of the law there is no authority to allow two absence periods, but the five months' residence or the six months' residence, as the case may be, must be in one continuous period.

6. Proof on an entry must be made within five years after its allowance, notwithstanding the fact that relief may have been granted under this act; but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

7. An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the claim must aggregate at least 14 months and cultivation of not less than one-sixteenth of the area must be shown, unless a reduction has been granted in the requirements in that regard.

8. Credit on account of a period of military service will be allowed as on other entries, but at least one year's compliance with the homestead laws must be shown in every case.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

(Form omitted.)

CIRCULAR NO. 682

INSTRUCTIONS IN RE FURNISHING CHIEFS OF FIELD DIVISIONS NOTICE OF INTENTION TO SUBMIT FINAL PROOF ON STOCK-RAISING HOMESTEADS

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE,
Washington, April 13, 1920.

Registers and Receivers, United States Land Offices.

SIRS: In view of the fact that the requirements necessary to perfect title in stock-raising homestead entries made under the act of December 29, 1916 (39 Stats. 862), are different from those required in the case of homestead entries made under other acts, it is important that the carbon copies of notices of application to make final proof which you transmit to the Chief of Field Division shall indicate by indorsement, if not in the notice itself, whether or not the application is a stock-raising homestead entry.

It is accordingly directed that if the entry on which proof is to be submitted is a stock-raising homestead entry the carbon copy of the notice which you send to the Chief of Field Division shall in every case bear the following indorsement:

Stock-raising homestead entry, act December 29, 1916 (39 Stats. 862).

Rubber stamps for this purpose will be transmitted to you.

Very respectfully,

Clay Tallman, *Commissioner.*

Circular No. 697

INSTRUCTIONS RELATING TO PETITIONS FOR DESIGNATION OF LANDS UNDER THE STOCK-RAISING HOMESTEAD LAW

Department of the Interior,
General Land Office,
Washington, May 26, 1920.

Registers and Receivers, United States Land Offices.

Sirs: The present procedure in handling petitions for the designation of lands under the stock-raising law is not entirely satisfactory, and in order that there may be more cooperation in the work relating thereto between your office, this office and the Geological Survey, and to facilitate the action on such petitions, the following instructions are given to be effective beginning July 1, 1920, and regulations in conflict herewith will not be followed after that date.

1. When applications to enter land under the stock raising act are filed in your office, together with petitions for designation of the lands in duplicate, you will note on each paper filed the date of the filing thereof, compare the petitions with the applications as to serial numbers and the description of the lands involved. The facing sheet to be attached to each petition as heretofore, should be made from the application and petitions, the greatest care being used to have it state correctly the serial numbers of each application and entry and the description of the lands in each by parts of sections, township, and range.

2. Instead of forwarding the petitions in duplicate to this office, you will, at the end of the month in which filed, send the duplicate petitions with facing sheets in each case direct to the Director, United States Geological Survey, Washington, D. C., noting on the original petition, which will be forwarded to this office with your monthly returns as heretofore, a statement as follows: "Duplicate petition to Geological Survey," giving date thereof. The applications to enter will be held by you as heretofore until you are advised of the desig-

nation of the lands through this office. In cases of applications to make second homestead entries and applications to amend, of course, the applications themselves should be forwarded to this office with the original petition for designation, the duplicate petition and facing sheet having been sent to the Geological Survey as above stated.

3. Before transmitting petitions for designation to this office and to the Geological Survey under these instructions, you will carefully examine your records to determine whether or not the lands applied for have been designated. If so, you should proceed to act upon the application to enter and the petition should not be forwarded to the Geological Survey, but should be attached to the application to make entry and forwarded to this office after appropriate action has been taken by you.

4. Because of the fact that many applications are pending in your offices involving the designation of lands under the stock raising law, of which the Geological Survey has no record, and because of the withdrawal or final closing out of cases, petitions in which have been sent the Geological Survey and no notice given of such withdrawal or closing, it is contemplated that registers and receivers will be called upon at least twice every year for a list of all stock-raising applications in their suspended files; your records should, therefore, be so kept as to enable you to furnish this data when called upon with the least possible trouble and expenditure of time. Said semiannual calls will be made probably about November 1 and May 1, of each year. Such list will contain the serial numbers and the names of the applicants.

5. Protests as to the character of the land in stock-raising applications and stock-raising entries received in your office should be sent direct to the Director, United States Geological Survey for consideration and report to this office.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

CIRCULAR No. 736

RELATIVE TO TRANSMITTAL OF PETITIONS TO DESIGNATE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 26, 1921.

Registers and Receivers, United States Land Offices.

SIRS: The Director of the United States Geological Survey has advised this office that petitions for designations, under both the enlarged and stock-raising homestead acts, are being received from your respective offices for lands already designated and, sometimes, for lands which are in whole or in part not subject to appropriation and entry because embraced in stock-driveway or other withdrawals or reservations. This indicates that the petitions are being transmitted without examination of your records.

You are directed, that where an application to enter accompanied by a petition to designate is received in your office, before transmitting the petition, to examine the records of your office for the status of the land involved and, if it is found that the land is already designated or an objection is shown which prevents the entry of the land or part thereof, not to forward the petition but to take appropriate action on the application for entry.

These instructions are not intended to affect the present practice under circular 729, relative to withdrawals or reservations under the Federal water power act.

Very respectfully,

Clay Tallman, *Commissioner.*

Circular No. 738

AMENDMENT TO STOCK-RAISING HOMESTEAD APPLICATION AND AFFIDAVIT

Instructions

Department of the Interior,
General Land Office,
Washington, March 7, 1921.

Registers and Receivers, United States Land Offices.

Sirs: On February 18, 1921, the department approved an amendment of the application and affidavit stock raising homestead entry, original and additional, Forms 4–016 and 4–016a, by making an additional requirement in the original entry—

> That no part of said land is claimed, occupied, or being worked under the mining laws; that said land is unoccupied and unappropriated by any person claiming the same under the public land laws other than myself.

And in the additional—

> That no part of said land is claimed, occupied, or being worked under the mining laws.

Inasmuch as there are at this time a large number of these blanks on hand, new forms will not be printed until the present supply is exhausted. You will, therefore, before allowing any new application under the stock raising law, require the applicant to furnish an additional affidavit as set out in the amendment above mentioned.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 48 L. D. 57]

CIRCULAR No. 746

VALIDATION OF ENLARGED HOMESTEAD ENTRIES—ACT OF MARCH 4, 1921 (41 STAT. 1433)

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 4, 1921.

Registers and Receivers, United States Land Offices, Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

SIRS: In order that you may be properly informed, and in view of entries now pending in your offices, which may be validated thereby, your attention is invited to section 1 of the act of Congress approved March 4, 1921 (41 Stat. 1433), which reads as follows:

> That all pending homestead entries made in good faith prior to January 1, 1916, under the provisions of the enlarged homestead laws, and all rights to enter land under said laws, based on settlement made thereon in good faith before said date, and while the land was unsurveyed, by persons who, before making such enlarged homestead entry, had acquired title to land under the homestead laws, and therefore were not qualified to make an enlarged homestead entry, or such settlement, be, and the same are hereby, validated, if in all other respects regular, in all cases where the original homestead entry was for less than one hundred and sixty acres of land: *Provided*, That no settlement claim shall be validated hereby where adverse claim for the land has been initiated before the passage of this Act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 48 L. D. 106]

CIRCULAR No. 753

ACT OF APRIL 6, 1914 (38 STAT. 312), AS AMENDED BY THE ACT OF MARCH 1, 1921 (41 STAT. 1193)—INTERMARRIAGE OF HOMESTEADERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 2, 1921.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is invited to the act of Congress of March 1, 1921 (41 Stat. 1193), adding a second proviso to the act of April 6, 1914 (38 Stat. 312). Said act now reads as follows:

> That the marriage of a homestead entryman to a homestead entrywoman after each shall have fulfilled the requirements of the homestead law for one year next preceding such marriage shall not impair the right of either to a

patent, but the husband shall elect, under rules and regulations prescribed by the Secretary of the Interior, on which of the two entries the home shall thereafter be made, and residence thereon by the husband and wife shall constitute a compliance with the residence requirements upon each entry: *Provided*, That the provisions hereof shall apply to existing entries: *Provided further*, That in the administration of this act the terms "entryman" and "entrywoman" shall be construed to include bona fide settlers who have complied with the homestead law for at least one year next preceding such marriage.

2. The amended act applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than one year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry placed of record before the marriage.

3. The law confers upon the husband the privilege of electing on which of the two entries of the family shall reside. His election must be supported by the affidavits of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and affidavits be executed in duplicate; then copies of all papers must be filed in each office.

4. The local officers will make due notation of the filing of the election on their records as to the entry or entries within their district, and will at once forward the papers with their recommendations, to the General Land Office, which will promptly pass upon the question of accepting the election. In cases where one or both of the claims are based on settlement only, they will assign the current serial number to the election, unless a serial number has been theretofore assigned to the claim.

5. Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The act makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed of record in accordance with an approved survey.

If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

Very respectfully,

William Spry, *Commissioner*.

Approved.

E. C. Finney,
First Assistant Secretary.

[Reported, 48 L. D. 174]

CIRCULAR No. 770

AMENDMENT OF CIRCULAR NO. 486, RELATING TO SECTION 7 OF THE ENLARGED HOMESTEAD ACT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 6, 1921.

Registers and Receivers, United States Land Offices.

SIRS: On July 22, 1921, the department amended the second paragraph of section 6 of the regulations (Circular No. 486), of July 8, 1916 (45 L. D. 208), under the act of July 3, 1916 (39 Stat. 344), adding a seventh section to the enlarged homestead act, to read as follows:

> In the proof, to be submitted within five years after the date of additional entry, there must be shown residence on the additional tract—or on the original, if permitted under the 20-mile exception above explained—for not less than three years, subject to the privilege of being absent five months in each year, as provided by the 3-year homestead law; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry, and of not less than one-eighth of its area during the third year and until submission of proof; but residence and cultivation for the requisite period after the date of the application and until the submission of proof will be accepted. If the land is most valuable for grazing, and an order entered relieving entryman from cultivating the required area, proof that the tract has been grazed for three years will be accepted. Credit for military service will be allowed as in other cases.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 48 L. D. 220]

CIRCULAR No. 783

INSTRUCTIONS IN RE METHOD OF HANDLING APPLICATIONS ALLEGING SETTLEMENT PRIOR TO DRIVEWAY WITHDRAWALS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 8, 1921.

Registers and Receivers and Chiefs of Field Divisions.

SIRS: Hereafter when nonmineral applications are presented for lands embraced in a stock driveway withdrawal by persons claiming settlement prior to such withdrawal, you will refer such applications to the proper chief of field division for investigation and report before final action is taken thereon, in accordance with the practice established under circular of March 6, 1911 (39 L. D. 544), governing applications of alleged settlers for lands withdrawn under the act of June 25, 1910 (36 Stat. 847).

In certain instances heretofore entries of alleged settlers have been allowed for lands withdrawn for driveway purposes, owing to the exception in the orders of withdrawal, with a view to investigation if deemed advisable at the time final proof is submitted. The procedure hereby adopted will supersede that practice and protect applicants from the loss that might be sustained should their residence then be found insufficient to defeat the withdrawal.

Very respectfully,

William Spry, *Commissioner.*

Approved October 8, 1921.

E. C. Finney,
First Assistant Secretary.

Circular No. 784

INSTRUCTIONS—EXCESS PAYMENTS

Department of the Interior,
General Land Office,
Washington, October 19, 1921.

Registers and Receivers, United States Land Offices.

Sirs: The department, on July 30, 1921, modified the Ernest Muller decision (46 L. D. 243), in so far as it related to excess payments, and held—

> Upon mature consideration, the department has reached the conclusion that to give full effect to the provisions of sections 2289 and 2298, Revised Statutes, it must be held that any excess over 160 acres embraced in an original entry—the entryman having paid for such excess—must be disregarded in computing the area which the entryman may embrace in an additional entry under either the enlarged or the stock raising homestead act.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 796

APPLICATIONS FOR REDUCTION OF THE REQUIRED AREA OF CULTIVATION

Department of the Interior,
General Land Office,
Washington, December 20, 1921.[14]

Registers and Receivers, United States Land Offices.

Sirs: Circular No. 195, dated November 16, 1912, directing that all applications for reduction of the required area of cultivation be transmitted to chiefs of field divisions, is hereby revoked.

In the future, after indorsing thereon their recommendations and making the necessary notations on their records, local officers will at once forward such applications to this office, without letter of transmittal.

If final proof on the entry involved has been submitted, the same should be forwarded with the application for reduction.

Very respectfully,

William Spry, *Commissioner.*

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[14] See Circular of Sept. 21, 1923, p. 600.

[Reported, 48 L. D. 438]

CIRCULAR NO. 807[15]

FORMS FOR FINAL PROOFS ON STOCK-RAISING HOMESTEAD ENTRIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 9, 1922.

Registers and Receivers, United States Land Offices.

SIRS: On January 7, 1922, the department approved Forms 4–369b, (testimony of claimant), and 4–369c, (testimony of witnesses), for final proof on stock-raising homestead entries. A supply of these forms is being sent to all district offices.

On and after April 1, 1922, you will not accept such proofs made on other forms except as hereinafter provided.

Because of the fact that unofficial forms for stock-raising homestead proofs, not differing materially from the official forms now furnished, have been published and no doubt widely distributed among among proof-taking officers, you are authorized to accept, until October 1, 1922, proofs made on such forms.

In the interest of economy and good administration, you will not hereafter furnish official forms of affidavits, applications, proofs, etc., to agents, attorneys, proof-taking officers, or others, except that sample copies may be supplied for printing. You will, however, furnish any necessary form to an actual applicant or claimant for public land upon his request.

Circulars 374 (43 L. D. 494), 443, and any other circulars or instructions in conflict herewith are modified accordingly.

A copy hereof should be sent to each proof-taking officer and recognized agent or attorney in your respective districts.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 48 L. D. 454]

CIRCULAR NO. 810

INSTRUCTIONS AS TO CONTESTS AGAINST STOCK-RAISING HOMESTEAD ENTRIES BASED ON ALLEGATIONS OF FRAUD AND MISREPRESENTATION IN SECURING DESIGNATION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 18, 1922.

Registers and Receivers, United States Land Offices.

SIRS: In view of the departmental decision of July 21, 1919, in Dominquez *v.* Cassidy (47 L. D. 225), you will not allow, without instructions from this office, any application to contest an entry under the stock-raising homestead act where fraud and misrepresentation in securing the designation of the land are alleged.

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[15] See Circular No. 847, p. 593.

On receipt of such an application to contest, you will transmit the papers to this office by special letter with a request for instructions, making appropriate reference hereto.

Such applications to contest will be rejected where it appears, from the records of the department, that the designation of the land was preceded by and based on a field investigation.

Very respectfully,

William Spry, *Commissioner*.

Approved February 18, 1922.

E. C. Finney,
First Assistant Secretary.

[Reported, 49 L. D. 9]

Circular No. 263

[Revision of regulations of August 19, 1913 (42 L. D. 331)]

REGULATIONS GOVERNING ENTRIES WITHIN NATIONAL FORESTS

Department of the Interior,
General Land Office,
Washington, D. C., May 2, 1922.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to the act of June 11, 1906 (34 Stat. 233), a copy of which is hereto attached as Appendix A. This act authorizes homestead entries for lands within national forests, and you are instructed thereunder as follows:

1. Both surveyed and unsurveyed lands within national forests which are chiefly valuable for agriculture and not needed for public use may, from time to time, be examined, classified, and listed under the supervision of the Secretary of Agriculture, and lists thereof will be filed by him with the Secretary of the Interior, who will then declare the listed lands subject to settlement and entry.

2. By an act approved August 10, 1912 (37 Stat. 269), the Secretary of Agriculture was directed to select, classify, and segregate all lands within the boundaries of national forests that may be opened to entry under the homestead laws applicable thereto. Any person interested in securing a classification or review of a classification previously made by the Secretary of Agriculture should present his request to the supervisor of the national forest in which the land is located, and should state the reasons which he may have for believing the land has not been properly classified.

3. When any lands have been declared subject to settlement and entry under this act, a list of such lands, together with a copy of the notice of restoration thereof to entry and authority for publication of such notice, will be transmitted to the register and receiver for the district within which the lands are located. Upon receipt thereof the register will designate a newspaper published within the county

in which the land is situated and transmit to the publishers thereof the letter of authority and copy of notice of restoration, said notice to be published in the designated newspaper once each week for four successive weeks. You will also post in your office a copy of said notice, the same to remain posted for a period of 60 days immediately preceding the date when the lands are to be subject to entry. If no paper is published within the county, publication should be made in a newspaper published nearest the land.

4. The cost of publishing the notice mentioned in the preceding paragraph will not be paid by the receiver, but the publisher's vouchers therefor, in duplicate, should be forwarded to the Department of the Interior, Washington, D. C., by the publisher, accompanied by a duly executed proof of publication. The register will require the publisher to promptly furnish him with a copy of the issue of the paper in which such notice first appears, will compare the published notice with that furnished by this office, and in case of discrepancy or error cause the publisher to correct the printed notice and thereafter publish the corrected notice for the full period of four weeks.

5. In addition to the publication and posting above provided for, you will, on the day the list is filed in your office, mail a copy of the notice by registered letter to any person known by you to be claiming a preferred right of entry on any of the lands described therein, and also at the same time mail a copy of the notice by registered letter to each of the persons named after each tract in the restoration notice and advise each of them of his preferred right to make entry during the 60-day period prior to the date of restoration. Upon receiving evidence of service of such notice or notices you will forward same to this office.

6. Any person qualified to make a homestead entry who, prior to January 1, 1906, occupied and in good faith claimed any lands listed under this act for agricultural purposes, and who has not abandoned the same, and the person upon whose application such land was listed, or a qualified ex-service man of the war with Germany, has, each in the order named, the preferred right to enter the lands so settled upon or listed at any time within 60 days prior to restoration of the land, or in the case of an ex-service man of the World War at any time within 90 days prior to date of restoration. Should an application be filed by such settler during the 60-day period you will, upon his showing by affidavit the fact of such settlement and continued occupancy, allow the entry. If an application is filed during the said period by the party upon whose request the lands were listed, or by an ex-service man of the World War, during the 90-day period, you will retain said application on file in your office until the date of restoration or until an entry has been made by a claimant having the superior preference right. If no application by a bona fide settler prior to January 1, 1906, is filed within the preference-right period, you will allow the application of the party upon whose request the lands were listed. If entry by a person claiming a settler's preference right is allowed, other applications should be rejected without waiting the expiration of the preferred period. Of the applicants for listing, only the one upon whose request a tract is listed secures any preference right. Other applicants for the listing of the same tract acquire no right by virtue of such applications.

While the preference-right period of ex-service men of the war with Germany begins to run 90 days prior to the date of the restoration of the land to entry, filings may be presented during the 20 days preceding such preference-right period; that is, from the one hundred and tenth day to the ninetieth day prior to date of restoration, and such filings will be treated as simultaneously filed at 9 a. m., on the ninetieth day of prior to date of restoration in the manner provided by Circular No. 324, approved May 22, 1914 (43 L. D. 254). The filings of the successful ex-service applicant may thereafter be allowed only in the event prior claimants do not exercise their preference right before the date of restoration.

All applications by others than the classes above referred to, which are filed prior to the date of opening, should be rejected forthwith notwithstanding the fact that an attempted transfer of the preference right of entry may have been made, but applications may be filed by the general public within 20 days prior to the date of restoration, and all such applications will be treated as simultaneously filed at 9 a. m. on the date of restoration, in accordance with said Circular No. 324.

The approved form of notice of restoration reads as follows:

RESTORATION TO ENTRY OF LANDS IN NATIONAL FOREST

Notice is hereby given that the lands described below, embracing ——— acres, within the ——— ——— National Forest, ———, will be subject to settlement and entry under the provisions of the homestead laws of the United States and the act of June 11, 1906 (34 Stat. 233), at the United States land office at ———, on ———, by any qualified person, except that for a period of 90 days prior to said date the land will be subject to a preference right of ex-service men of the war with Germany. Such ex-service men, in order to avail themselves of their preference rights, must file their applications on or after (one hundred and tenth day prior to restoration) but prior to (date of restoration). All such applications filed on or after (one hundred and tenth day prior to restoration) but prior to (ninetieth day prior to restoration) will be treated as simultaneously filed at 9 a. m. on (ninetieth day prior to restoration). All such applications filed on or after (ninetieth day prior to restoration) but prior to (date of restoration) will be treated in the order in which filed.

Applications may be filed by the general public within 20 days prior to (date of restoration) and will be treated as simultaneously filed at 9 a. m. on (date of restoration).

(Description of lands restored.)

(Date.)

This form should be modified to cover notice to bona fide settlers prior to January 1, 1906, and to applicants for listing under the act of June 11, 1906, where it appears that the rights of such parties are involved.

7. The fact that a settler prior to January 1, 1906, has already exercised or lost his homestead right will not prevent him from making entry of the lands settled upon if he is otherwise qualified to make entry, but he can not obtain patent until he has complied with all of the requirements of the homestead law as to residence and cultivation and paid $2.50 per acre for the land entered by him.

8. When an entry embraces unsurveyed lands or irregular fractional parts of a subdivision of a surveyed section, a metes-and-bounds survey of such lands and fractional parts must be made at some time before the entryman applies to make final proof. Survey

will not be required where the tract can be described by legal subdivisions or as a quarter or a half of a surveyed quarter-quarter section or rectangular-lotted tract, or as a quarter or half of a surveyed quarter-quarter-quarter-section or rectangular-lotted tract.

9. Under the act of August 10, 1912 (37 Stat. 287), and subsequent acts making appropriations for the Department of Agriculture, authority is given for the making of metes-and-bounds surveys by the forest officers under the direction of the surveyor general. (See Circular No. 235 of April 30, 1913.)

10. Application for survey should be made by the entryman to the district forester of the district in which the lands lies, and upon execution of same and filing of the approved plat in the local land office a copy of same will be sent to the entryman for posting upon the land during the period of publication, and upon receipt of his plat the entryman may apply to submit proof.

11. The commutation provisions of the homestead laws do not apply to entries made under this act, but all entrymen must make final proof of residence and cultivation within the time, in the manner and under the notice prescribed by the general provisions of the homestead laws, except that all entrymen who are required by the preceding paragraphs to have their lands, or any portion of them, surveyed must, within five years from the date of their settlement, present to the register and receiver their application to make final proof of all of the lands embraced in their entries.

Entries made under the said act of June 11, 1906, are subject to the provisions of sections 2291 and 2297, United States Revised Statutes, as amended by the 3-year homestead act of June 6, 1912 (37 Stat. 123), whether made before or after June 6, 1912.

12. In all cases where a survey of any portion of the lands embraced in an entry made under this act is required, the register will, in addition to publishing and posting the usual final-proof notices, keep a copy of the final-proof notice, with a copy of the field notes and the plat of such survey attached, posted in his office during the period of publication, and the entryman must keep a copy of the final-proof notice and a copy of the plat of his survey prominently posted on the lands platted during the entire period of publication of notice of intention to submit final proof, and at the same time his final proof is offered he must file an affidavit showing the date on which the copies of the notice and plat were posted on the land and that they remained so posted during such period, giving dates.

13. Section 1 of the said act of June 11, 1906, having been amended by the act of May 30, 1908 (35 Stat. 554), the only counties in southern California in which entries thereunder can not be made are San Luis Obispo and Santa Barbara, to which counties the act of June 11, 1906, does not apply. Entries made of lands in the Black Hills National Forest can be made only under the terms and upon the conditions prescribed in sections 3 and 4 of the act of June 11, 1906, as amended by the act of February 8, 1907 (34 Stat. 883), and the act of July 3, 1912 (37 Stat. 188).

14. This act does not authorize any settlements within forest reserves except upon lands which have been listed, and then only in the manner mentioned above, and all persons who attempt to make any unauthorized settlement within such reserves will be considered trespassers and treated accordingly.

15. The act of June 11, 1906, provides that nothing shall be done to impair in any way the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve and maintains his settlement claim as required by law.

Very respectfully,

William Spry, *Commissioner.*

Approved May 2, 1922.

E. C. Finney,
First Assistant Secretary.

(Act omitted.)

[Reported, 49 L. D. 114]

Circular No. 826

HOMESTEAD EXEMPTION—SECTION 2296, U. S. R. S., MADE APPLICABLE TO ALL HOMESTEAD ENTRIES

Department of the Interior,
General Land Office,
Washington, May 19, 1922.

Registers and Receivers, United States Land Offices.

Sirs: Attention is directed to Public Resolution No. 53, approved April 28, 1922, which provides as follows:

> That the provisions of section 2296 of the United States Revised Statutes have been and are applicable to all entries made under the homestead laws and laws supplemental and amendatory thereof.

Section 2296, Revised Statutes, provides:

> No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

Very respectfully,

William Spry, *Commissioner.*

Approved May 19, 1922.

E. C. Finney,
First Assistant Secretary.

Circular No. 847

CONTINUED USE OF CERTAIN UNOFFICIAL FORMS

Department of the Interior,
General Land Office,
Washington, September 11, 1922.

Registers and Receivers, United States Land Offices.

Sirs: By Circular No. 807, dated February 9, 1922, you were advised that Forms 4–369b and 4–369c should be used in final proofs on stock-raising homestead entries on and after April 1, 1922, but—

> Because of the fact that unofficial forms for stock-raising homestead proofs, not differing materially from the official forms now furnished have been pub-

lished and no doubt widely distributed among proof-taking officers, you are authorized to accept, until October 1, 1922, proofs made on such forms.

The General Land Office having been advised that considerable supplies of the unofficial forms referred to are still in the hands of the publisher thereof and of proof-taking officers, the limit of time within which such forms may be accepted is hereby extended to October 1, 1924.

Very respectfully,

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

Circular No. 861 [16]

PROCEDURE IN CONNECTION WITH FINAL PROOFS SUBMITTED IN ADVANCE OF NATURALIZATION

Department of the Interior,
General Land Office,
Washington, November 6, 1922.

Registers and Receivers, United States Land Offices.

Gentlemen: My attention has been called to the fact that the practice appears to be prevalent amongst certain of the local land offices to permit homesteaders to make final proof on their homestead entries in advance of their naturalization and then holding said proofs in their offices awaiting completion of citizenship and furnishing of evidence thereof.

The regulation under the homestead law, paragraph 38a, Circular No. 541, reads as follows:

> Final proof can be made only by citizens of the United States.

Therefore, the practice of submitting final proofs in advance of naturalization should be discouraged as much as possible exception being made, however, in those cases where entryman is not able to complete his citizenship within the statutory life of the entry, and the proof is submitted in advance of naturalization in order that it be in time.

Where final proof is made and not accompanied with record evidence of naturalization and no showing is made that naturalization will be procured at some future date you will reject the proof subject to appeal, and if response is made thereto but the desired citizenship evidence not furnished you will transmit the record hereof for consideration.

Where such proofs are received and accompanied by showing that record of evidence of naturalization is to be furnished at some future date, you will notify the parties that the proofs are suspended and forward to this office for consideration, if otherwise satisfactory.

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[16] See Circular No. 891, p. 598.

If you are holding final proofs in your office awaiting furnishing of record evidence of naturalization, you will promptly transmit the same to this office for consideration.

Very respectfully,

GEO. R. WICKHAM,
Acting Commissioner.

CIRCULAR No. 780

INSTRUCTIONS RELATIVE TO ADDITIONAL STOCK-RAISING APPLICATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 3, 1923.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Until further instructed, you will, when an additional application under the stock-raising homestead act of December 29, 1916 (39 Stat. 862), is filed, be particular, if the application is not one under section 4 of the act, to secure facts from the applicant sufficient to enable determination of whether the application is to be allowed under section 3 or section 5 of the act.

With this end in view you will require the applicant to state whether or not he owns and resides upon the land in his original entry. If this is the case the application will be allowed under section 5 of the act.

If the applicant does not own his original entry, or owns the same and does not reside thereon, or fails, after due notice, to make response, the application will be allowed under section 3 of the act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 49 L. D. 506]

CIRCULAR No. 886

DESIGNATION UNDER ENLARGED AND STOCK-RAISING HOMESTEAD LAWS OF ENTERED LANDS WITHIN NATIONAL FORESTS AS BASIS FOR ADDITIONAL ENTRY OUTSIDE SUCH FORESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 30, 1923.

Registers and Receivers, United States Land Offices.

GENTLEMEN: By act of March 4, 1923 (42 Stat. 1445), provision has been made whereby the Secretary of the Interior may now designate under the enlarged homestead act and the stock raising act national-forest lands embraced in subsisting or perfected homestead entries of 160 acres or less so that such forest homestead entries may be the basis for additional entries under said acts. The act reads as follows:

> That any homestead entryman of one hundred and sixty acres or less of lands which have been or may hereafter be designated or classified by the Sec-

retary of the Interior as subject to entry under the provisions of the enlarged homestead act of February 19, 1909, or June 17, 1910, who has not submitted final proof upon his existing entry, and any homestead entryman who has submitted final proof, or received patent, for such an amount of lands which have been or may hereafter be designated or classified by the Secretary of the Interior as of the character described in said act, and who owns and resides upon the said homestead entry, where said lands are within a national forest, may make an additional entry for and obtain patent to such an amount of land, of that same character, not in a national forest, and within a radius of twenty miles from said homestead entry, as, when the area thereof is added to the area of the original entry, will not exceed three hundred and twenty acres, and residence upon the original entry shall be credited on both entries; but cultivation must be made on the additional entry as required by said act. For the purposes of this act the Secretary of the Interior is authorized to designate as subject to the enlarged homestead acts lands embraced, at the time of such designation, within valid subsisting entries within national forests.

Sec. 2. That any homestead entrymen of one hundred and sixty acres or less of lands which have been or may hereafter be designated or classified by the Secretary of the Interior as subject to entry under the provisions of the stock raising homestead act of December 29, 1916, who has not submitted final proof upon his existing entry, and also any homestead entryman who has submitted final proof or received patent, for such an amount of lands that are of the character described as subject to entry under the provisions of the said stock raising homestead act, and who owns and resides upon the said homestead entry, where said lands are within a national forest, may make an additional entry for and obtain patent to such an amount of land of that same character, not in a national forest and within a radius of twenty miles from said homestead entry, as, when the area thereof is added to the area of the original entry, will not exceed six hundred and forty acres, and residence upon the original entry shall be credited on both entries; but improvements must be made on the additional entry equal to $1.25 for each acre thereof. For the purposes of this act the Secretary of the Interior is authorized to designate under the stock raising homestead act lands embraced, at the time of such designation, within valid subsisting entries within national forests.

2. The intent and purpose of said act is to permit persons holding existing or perfected homestead entries for lands within national forests of a character subject to designation which the applicant owns and on which he resides, to make additional entries for such a quantity of land outside of the national forest and within 20 miles of the original entry as when added to the area of the original entry will not exceed 320 acres, if under section 1 thereof, or 640 acres if under section 2 thereof.

3. The procedure in making and perfecting an entry under section 1 of this act will be in all respects similar to that explained in paragraphs 43 to 47, inclusive, of Circular No. 541, approved January 16, 1922[f] (48 L. D. 389), covering additional entries under the enlarged homestead acts, the only difference being that at the time of making the entry hereunder after proof on an original entry, the applicant must show ownership of and residence on the land in the original entry, instead of ownership and occupancy, and an additional hereunder may be made for land not adjoining that in the original entry. Residence on the original entry may be credited on both entries, but cultivation of the land in the additional entry must be as indicated in said paragraph 47.

4. The procedure in making and perfecting an entry under section 2 of this act will be governed by the instructions in paragraphs 8, 9,

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[f] Circular No. 541 of Jan. 16, 1922, has been superseded by Circular No. 541 of July 16, 1926, p. 622.

11, and 12 of Circular No. 523,[g] approved December 4, 1922. Residence on the original entry may be credited on both entries, but stock-raising improvements must be placed on the additional entry equal to $1.25 per acre.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved March 30, 1923.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 49 L. D. 528]

HOMESTEAD ENTRIES UNDER KINKAID ACT—ADDITIONAL ENTRIES

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 7, 1923.

REGISTER, UNITED STATES LAND OFFICE,
Lincoln, Nebr.:

The Commissioner of the General Land Office has forwarded to the department your letter of March 7, 1923, in which you refer to the departmental decision in the case of Earl A. Mann (49 L. D. 286), and request instructions on the matters hereinafter discussed.

It is apparent from your inquiries that you have heretofore failed to take cognizance of section 2 of the act of March 2, 1907 (34 Stat. 1224), the last phrase of which (referring to the so-called Kinkaid Act), reads as follows:

> and all homestead entries hereafter made within the territory described in the aforesaid act shall be subject to all the provisions thereof.

On April 27, 1907 (35 L. D. 542), the department approved instructions under said act of 1907, but the last word of the quoted phrase was treated as " hereof," resulting in a failure to give proper effect to said section 2. The error was carried into the revised regulations of October 28, 1908 (37 L. D. 225), and the revision of June 7, 1910 (39 L. D. 18). It was not until January 19, 1912, that the department correctly quoted said section 2, but in the revised regulations approved that date (40 L. D. 369), nothing was said as to the effect thereof. As a result, local officers in the Kinkaid territory allowed entries for 160 acres or less upon payment of less fees and commissions than are provided for by the Kinkaid Act, and the commutation of such entries was permitted. The General Land Office has passed the entries to patent. As such entrymen proceeded under the departmental interpretation of the act of 1907, entries already made for 160 acres or less in the Kinkaid territory will be allowed to proceed to patent as if section 2 of the act of 1907 had not been enacted, but such action will not be treated as conferring on the entrymen any additional rights under the Kinkaid Act.

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[g] Circular No. 523 of Dec. 4, 1922, has been superseded by Circular No. 523 of Jan. 2, 1925, p. 603.

From and after the receipt hereof by you, you will be governed by the following:

1. All homestead entries (other than entries under the stockraising homestead act), for lands in the so-called Kinkaid territory will be governed by the provisions of the Kinkaid Act as amended. At the time an application is made, $14 should be collected as fee and commissions, and at the time of final proof, $4, without regard to the area embraced in the entry.

2. Section 7 of the act of May 29, 1908 (35 Stat. 465), amended section 2 of the Kinkaid Act so as to bring the right of additional entry of contiguous land under said act up to the date of the amendment; hence, an entry made after March 2, 1907, but prior to May 29, 1908, for less than 640 acres would be proper basis for additional entry under said section 2.

3. A person who, since May 29, 1908, made an entry for land within the territory, of any area, has exhausted his right under the Kinkaid Act, except that, if contiguous lands become vacant, he can amend his unperfected entry to embrace such lands to the limit of 640 acres; or, if the entry has been perfected and embraces less than 160 acres, he can make an additional entry of contiguous land under section 2 of the act of April 28, 1904 (33 Stat. 527), or he can make an additional entry under section 6 of the act of March 2, 1889 (25 Stat. 854), either within or outside the Kinkaid territory. If the additional entry be made for land within the territory, the fee and commissions exacted by the Kinkaid Act must be collected, and the final proof must comply with the provisions of the Kinkaid Act.

4. A person who has, at any time, entered under the homestead laws less than 640 acres outside the Kinkaid territory may make an entry under the first proviso to section 3, provided he is not the owner of more than 160 acres of land in the United States acquired under other than the homestead law.

5. A person who made a homestead entry in the Kinkaid territory prior to June 28, 1904, is entitled to the benefits of the first proviso to said section 3, but said proviso can not be invoked by a person who has already had the benefit of the Kinkaid Act.

E. C. Finney,
First Assistant Secretary.

[Reported, 49 L. D. 538]

Circular No. 891[17]

SUSPENSION OF FINAL PROOFS ON HOMESTEAD ENTRIES TO AWAIT NATURALIZATION OF ENTRYMEN

Department of the Interior,
General Land Office,
Washington, April 23, 1923.

Registers and Receivers, United States Land Offices.

Gentlemen: The Commissioner of Naturalization, Department of Labor, has advised this office that it frequently happens that homestead entrymen who have delayed applying for admission to citizenship until the lifetime of their entries has almost expired have been able to influence hasty action by the courts by stating that unless they secure evidence of naturalization their entries will be canceled.

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[17] See Circular No. 861, p. 594.

The Naturalization Service, which objects to favorable action on an application of a foreign-born for American citizenship before the applicant has been instructed in the principles of our Government, is desirous of this office taking such action as will assure homestead entrymen who are acting in good faith that their entries will not be canceled merely because they have not been admitted to citizenship prior to the expiration of the statutory life of their entries.

You are therefore instructed as follows:

Where final proof on a homestead entry has been submitted by a person who has not received a certificate of naturalization, but whose application therefor is pending in court, you will, should such proof be found otherwise satisfactory, advise the claimant that the proof will be suspended to await action on his application for admission to citizenship. The claimant should be also advised that with a certified copy of his certificate of naturalization, when issued, should be filed a new final affidavit and an affidavit, corroborated preferably by his final-proof witnesses, showing what use he has made of the land since the date of the final proof, upon receipt of which, if all be found satisfactory, final certificate will issue.

In the event an entryman seeks time beyond the statutory life of his entry within which to submit final proof, on the ground that he is unable to furnish evidence of his admission to citizenship, you will require him to take the proper steps, within 30 days from notice, looking to the submission of final proof, under penalty of cancellation of the entry, and with such proof to submit a showing as to his citizenship status. Should it be made to appear that an application for admission to citizenship is pending, you will proceed as above directed; if none, you will advise the party that he should at once apply for admission and inform you that he has done so, whereupon the proof, if otherwise satisfactory, will stand suspended for such reasonable time as may be needed to complete the citizenship proceedings, and furnish the evidence specified in the preceding paragraph.

Final proof so suspended should be forwarded with your regular returns with a copy of your letter to the claimant.

In any case where you are in doubt as to the proper course of action you will forward the papers to this office for consideration, notifying the claimant of your action.

Respectfully,

William Spry, *Commissioner.*

Approved April 23, 1923.

E. C. Finney,
First Assistant Secretary.

APPLICATIONS FOR REDUCTION OF THE REQUIRED AREA OF CULTIVATION ON ENTRIES UNDER SECTION 6, ENLARGED HOMESTEAD ACT

Department of the Interior,
General Land Office,
Washington, September 21, 1923.

Registers and Receivers, United States Land Offices, Idaho and Utah, and Chiefs of the Portland and Salt Lake Field Divisions.

Gentlemen: By Circular No. 796, of December 20, 1921, to registers and receivers, United States land offices, Circular No. 195, dated November 16, 1912, directing that all applications for reduction of the required area of cultivation be transmitted to chiefs of field divisions, was revoked, and it was directed that such applications be forwarded to this office for action. By order of the same date, chiefs of field divisions were directed to report on the applications for reduction then in their offices without field investigations, and were informed that in the future field investigations would be made only when so directed by this office.

Since said orders of December 20, 1921, a great many applications for reduction of the required area of cultivation, some seeking relief from any cultivation whatever, have been filed and allowed in connection with entries made under sections 6 of the acts of February 19, 1909, and June 17, 1910, known as the enlarged homestead acts, the entrymen being thus enabled to obtain title to the lands without residence and with little or no cultivation. In view of this, and certain information which has come into the possession of the land department, it is believed that field investigation should be made in these cases to determine whether reduction should be allowed.

Hereafter you will promptly forward to the proper chief of field division, making necessary notations on your records, all applications filed by homestead entrymen for reduction of the required area of cultivation involving entries made under section 6 of the enlarged homestead act. The chief of field division will cause investigations to be made as soon as practicable, and submit report direct to this office. In each case you will advise this office of the filing of such application and its reference to the chief of field division.

Very respectfully,

William Spry, *Commissioner.*

Approved.

Hubert Work, *Secretary.*

[Reported, 50 L. D. 261]

Circular No. 913[18]

LAND IN PETROLEUM RESERVES NOT SUBJECT TO ENTRY UNDER THE STOCK-RAISING HOMESTEAD ACT

Department of the Interior,
General Land Office,
Washington, February 2, 1924.

Registers and Receivers, United States Land Offices.

Gentlemen: It appears that many local officers have allowed applications to make entry under the stock-raising homestead act for land within the limits of petroleum reserves. As said act is limited by its terms to "unappropriated unreserved public lands," you will reject, subject to the right of appeal, all applications to make entry under said act for land within the limits of petroleum reserves, even though the land may be designated as of the character contemplated by the said act.

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[18] Modified by Circular No. 983, p. 620.

As to stock-raising entries heretofore allowed for land within the limits of petroleum reserves, you will, on the submission of satisfactory final proof, forward all papers to this office, without the issuance of final certificate.

Applications to make entry under section 2289, Revised Statutes, or under the enlarged-homestead act for unappropriated land within petroleum reserves may be allowed if made subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509), as to oil and gas, provided the land is not also within the limits of the geologic structure of a producing oil or gas field.

Lands within naval reserves are not subject to any form of appropriation.

Very respectfully,

William Spry, *Commissioner*.

Approved February 2, 1924.

E. C. Finney,
First Assistant Secretary.

Circular No. 917

RELATIVE TO ISSUANCE TO FINAL CERTIFICATES ON COMBINED FINAL HOMESTEAD PROOFS

Department of the Interior,
General Land Office,
Washington, February 20, 1924.

Registers and Receivers, United States Land Offices.

Sirs: Hereafter, where satisfactory final proof is received involving several homestead entries, and one or more of the entries involved are under the stock-raising act, separate final certificate covering the stock-raising entry or entries will be issued.

For example:

If the final proof is in support of an original entry under section 2289 or enlarged homestead act and an additional entry or entries under the stock-raising act, or on an original entry under section 2289 and additional entries under both the enlarged and stock-raising homestead acts, two final certificates will issue, one for the entries not under the stock-raising act, the other for the entry or entries under said act.

Each final certificate, in addition to carrying appropriate mineral reservation, should contain a reference to the other.

Very respectfully,

William Spry, *Commissioner*.

Circular No. 920

REGARDING DISPOSITION OF ADDITIONAL HOMESTEAD APPLICATIONS UNDER SECTION 2 OF THE ACT OF APRIL 28, 1904 (33 STAT. 527)

Department of the Interior,
General Land Office,
Washington, March 14, 1924.[19]

Registers and Receivers, United States Land Offices.

Gentlemen: The purpose of this circular is to correct an erroneous practice adopted by some of the local land officers in disposing of applications to make homestead entries under section 2 of the act of April 28, 1904 (33 Stat. 527), as additionals to original entries perfected under the three or five-year homestead law.

The additional rule relating to additional entries under the act of April 28, 1904, as set forth in Circular No. 177, dated October 2, 1912 (41 L. D. 292), in part, reads as follows:

> but the applicant will be required to begin within 20 days from the filing of his application, publication of notice thereof, * * * that the purpose thereof is to allow all persons claiming the land adversely or desiring to show it to be mineral in character an opportunity to file objection to the application with the local land officers for the land district in which the land is situated and to establish their interests therein, or the mineral character thereof.

A number of the local land officers are allowing the applications and then ordering publication and some are allowing the applications without following with publication.

The correct procedure upon the filing of such applications, if regular, is to examine the records of your office for any objections to their allowance and in event none are shown to issue the notice for publication with the instruction that the publication must begin within 20 days from the date the homestead application was filed.

The publication should show that the homestead applications are made, if such be the case, subject to whatever mineral or other reservation is properly applicable thereto.

If the party fails to begin publication within the period prescribed, or fails to furnish evidence of such publication when made, you will reject the application subject to the right of appeal.

Not until the expiration of the publication period and then only after proper evidence of publication has been furnished your office and no objection to the allowance of the applications has been received, should the homestead applications be allowed.

Promptly upon the allowance of the homestead applications the final certificate should be issued, therefore, the final commissions should be paid with the applications to be earned and applied only after publication, in the absence of any objection to the issuance of the final certificate.

Very respectfully,

William Spry, *Commissioner.*

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[19] See Circulars of July 27, 1907, p. 538, Sept. 11, 1908, p. 540, and Oct. 2, 1912 (No. 177), p. 546.

[Reported, 51 L. D. 1]

CIRCULAR No. 523 [20]

STOCK-RAISING HOMESTEAD ACT OF DECEMBER 29, 1916 (39 STAT. 862)

INSTRUCTIONS

[Reprint of regulations of December 14, 1921 (48 L. D. 485), with amendments of September 9, 1922, Circular 846, (49 L. D. 266); February 18, 1922, Circular 810 (48 L. D. 454); March 30, 1923, Circular 886 (49 L. D. 506); February 1, 1924, Circular 912 (50 L. D. 260); February 2, 1924, Circular 913 (50 L. D. 261); and July 19, 1924, Circular 952 (50 L. D. 580)]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 2, 1925.

Registers and Receivers, United States Land Offices.

SIRS: The following instructions are issued under the provisions of the act of December 29, 1916, relating to stock-raising homesteads as amended by the act of October 25, 1918 (40 Stat. 1016), act of September 29, 1919 (41 Stat. 287), act of March 4, 1923 (42 Stat. 1445), and the act of June 6, 1924 (43 Stat. 469):

WHAT LANDS SUBJECT TO ACT

1. The Secretary of the Interior is authorized, pursuant to application or otherwise, to designate unreserved public lands in any of the public-land States, but not in Alaska, as "stock-raising lands." This includes ceded Indian lands, unless entries therefor are limited to a smaller area by the acts governing their appropriation; but it does not include lands in national forests. From time to time lists of land thus designated will be sent to the registers and receivers in the districts wherein the land is situated, and they will be advised of the dates when the designations become effective.

2. The lands to be designated are those the surface of which is, in the opinion of the Secretary of the Interior, chiefly valuable for grazing and raising forage crops, which do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that 640 acres are reasonably required to support a family. The classification will be made, so far as practicable, to exclude lands that are not chiefly valuable for grazing and raising forage crops, either because too valuable for such use or too poor for such use. Lands which are capable of producing valuable crops of grain or other food cereal or fruit are not subject to designation, being, if otherwise subject to entry, disposable under the 160-acre or 320-acre homestead law, according to their character. No tract may be designated which contains a water hole, or other body of water, needed or used by the public for watering purposes, and such tracts may be reserved by the President and kept open to the public use under rules prescribed by the Secretary of the Interior. Whether the land will or will not support a family is not guaranteed in any manner by the designation of the land as subject

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[20] Amended by Circular No. 1160, p. 1594. See Circular No. 1189, p. 848.

to this act. The homesteader himself must take the burden of accepting the land designated as of a character that meets the requirements of the law.

Even though designated under the stock raising act, lands within the limits of petroleum reserves are not subject to entry under this act.

FEES AND COMMISSIONS

3. The fee and commissions on all entries under this act are calculated on the same basis as other entries. For a tract of less than 81 acres the fee is $5, and for that area or more it is $10. The commissions, both on making the entry and on submitting final proof, amount to 3 per cent on the Government price ($1.25 or $2.50 per acre, as the case may be), of the land in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and to 2 per cent in the other States. For example, on an entry for 640 acres in Washington, not within granted railroad limits, and therefore $1.25 land, the payment on making entry would be $34 and on submitting proof would be $24, in addition to testimony fees and publication fees payable to a newspaper.

QUALIFICATIONS FOR ENTRYMEN

4. (*a*) Any person qualified under the general laws to make homestead entry (that is, who has not exercised his right, or who is entitled to restoration of his right under general provisions of law) may make a stock-raising homestead entry for not exceeding 640 acres of unappropriated unreserved surveyed land, in reasonably compact form, which has been designated by the Secretary as above indicated. No rights can be acquired by an application for unsurveyed land; but where a tract of unsurveyed land has been designated a settlement right on not more than 640 acres may be established and maintained if the boundaries are plainly marked on the ground.

(*b*) A person otherwise qualified who has partially exhausted his right under the homestead laws other than this act, securing title to a tract of land, is entitled to make an original entry under the stock raising act for such an area as will not, with said tract, make up more than 640 acres; and the distance between the two tracts involved is immaterial. To illustrate, if he has a patented entry covering 120 acres he may make original stock-raising entry for as much as 520 acres; if his patented entry covers 240 acres of land designated under the enlarged homestead act, he is still a qualified entryman under that act and is, therefore, entitled to enter under the stock raising act as much as 400 acres; if he has entered 160 acres of land not designated under the enlarged homestead act, he may file petition for its designation thereunder, and his right to make original stock-raising entry will be contingent on designation as indicated.

(*c*) A person who has perfected, or has pending, an entry or entries initiated since August 30, 1890, under the desert land, timber and stone or preemption laws for 320 acres in the aggregate is disqualified from making any kind of entry under this act. If he made entries under said laws for not more than 160 acres they do not affect his right under this act. If he has entered under the desert land, timber and stone, or preemption laws more than 160 acres but approximately 40 acres less than 320 acres, he is entitled to make an original or an additional entry under this act; but the tract entered hereunder (which in no case must exceed approximately 640 acres), together with the land entered under the other laws mentioned, and his prior uncanceled homestead entry or entries, if any, must not aggregate more than 800 acres. In other words, a person who is qualified to make an original or an additional homestead entry under other laws for as much as approximately 40 acres can enter hereunder such an amount of land as will, with the area theretofore entered under the homestead laws, not exceed 640 acres, but the total of all entries under the agricultural public land laws (i. e., timber and stone, desert land, preemption, and homestead) must not exceed 800 acres.

COMPACTNESS OF ENTRY

5. With respect to compactness, no entry, nor any claim comprising an original entry and an additional entry under this act, shall entirely surround an unappropriated tract of public land, nor shall it have an extreme length of more than 2 miles if there be available land of the character described in the act the inclusion of which in the claim would reduce such length. An additional entry may not include an incontiguous tract if there is vacant unreserved land of the proper character available contiguous to the original tract. If there is not sufficient land thus available, two or more incontiguous tracts of designated land within a radius of 20 miles may be entered if in reasonably compact form, but an applicant will not be permitted to include a third tract in his entry while leaving unentered any part of a second, nor a fourth while leaving unentered any part of a third, etc. In other words, an original or an additional entry may embrace two or more incontiguous tracts, but not more than one of the tracts may have adjoining it vacant land of the character contemplated by the stock raising act. The applicant is at liberty to file an affidavit, corroborated by two witnesses, to the effect that land which should otherwise be included in his application but which is omitted therefrom is not of the character contemplated by the act, and all facts upon which that allegation is based should be fully set forth therein.

ADDITIONAL ENTRIES WITHIN 20 MILES

6. Any person otherwise qualified who has a pending or perfected homestead entry for less than 640 acres of land, which shall be designated as stock-raising land, may, under the first proviso to section 3 of the act, as amended, make an additional entry for a tract of designated land within a radius of 20 miles from the tract originally entered, and making up therewith an area of not more than 640 acres.

One who has made a stock-raising entry, whether original or additional, is not qualified to make a section 3 additional entry even though he has not obtained the maximum acreage allowed by the stock raising law.

Any person otherwise qualified who, when making an original entry under the stock raising homestead act, is unable to secure the maximum area permitted by reason of adjoining lands or lands within a radius of 20 miles from the lands originally entered being reserved or covered by prior filings or entries may, if the reservation be vacated, or if the intervening filings and entries be canceled as the result of relinquishment, contest, or otherwise, be permitted to enlarge his original entry, through amendment or by the filing of additional entry of designated lands within a radius of 20 miles from the tract originally entered, making up, with his first entry, an area of not more than 640 acres.

If he applies for land which is incontiguous to the original entry, he must furnish an affidavit that there is no unappropriated, unreserved land contiguous thereto of the character described in the act other than that for which he applies; however, this affidavit will not be necessary if your records show that there is no other vacant contiguous land. The same limitation as to compactness of form will be enforced as with respect to original entries as specified in paragraph 5 hereof. It is immaterial whether a person applying for additional entry under this provision of the law resides upon or owns the land first entered.

An application for additional entry not supported by an original entry or by an application for original entry allowable in whole or in part at the time of filing will be rejected unless the original application is for second entry and is accompanied by a second entry showing in which case action in the matter will be suspended pending determination of the applicant's second entry qualifications. If the original second entry application is allowed in whole or in part, the additional application will be considered; otherwise it will be rejected.

A married woman may make an additional entry under section 3 of the stock raising act, provided her husband is not holding an unperfected entry requiring residence. In order to perfect such additional entry, three years' actual residence thereon, together with the required improvements and use of the land for raising stock and forage crops for not less than three years, must be shown.

Where an original or additional entry is made under the general homestead law or the enlarged homestead act for land which at date of filing application to make entry was enterable under the stock raising act, and the homesteader finds the physical condition of the land such that he can not comply with the cultivation requirements, he will not be granted a reduction in the required area of cultivation. In such cases the homesteader should file application for change of the character of the entry to one under the stock raising act, showing therein the nonadaptability of the land for cultivation; that the land does not contain any water holes, or other body of water needed or used by the public for watering purposes, and his consent to the entry being made subject to the reservation to the United States of all coal and other minerals in the land, together with the right to prospect for, mine, and remove the same. The application of the entryman should be in affidavit form, and the showing therein as to the character of the land should be corroborated by the affidavits of two witnesses.

Even though a person has two pending or perfected homestead entries, he may nevertheless make an additional entry under the proviso to section 3, provided all the other lands involved lie within 20 miles of the tract first entered. Where proof has been submitted on the original entry, the person may make an additional entry for land contiguous thereto, or within 20 miles, under section 5 of the act, provided he still owns and resides upon the original tract. (See par. 9 as to method of perfecting title to an entry under said section.)

A person whose right has been restored by a second entry act is in the position of never having made a homestead entry.

PROOFS ON ABOVE ENTRIES

7. The entries hereinbefore explained may be perfected by proofs submitted within five years after their dates on a showing of compliance with the provisions of the three year law (act of June 6, 1912, 37 Stat. 123), except that expenditures for improvements must be shown in lieu of the cultivation required by that act. The entryman must show that he has actually used the land for raising stock and forage crops for not less than three years, and that he has made permanent improvements upon the land, having an aggregate value of not less than $1.25 per acre, and tending to increase the value of the land for stock-raising purposes; and at least one-half of the improvements must be placed upon the tract within three years after the date of the entry.

As to residence, this must be continued for three years, subject to the privilege of a five months' absence in each year, divisible into two periods, if desired, but credit on the residence period on account of military service during time of war will be allowed as on other homestead entries; where an entry has been made, additional to a pending entry, or to a perfected entry for a tract, still owned by the claimant, the residence may be had on either of the tracts involved for three years after the additional is allowed, or becomes allowable. In other cases such residence must be on the land additionally entered. It must appear at the time of proof that there is then a habitable house on the land; but it will not be counted in estimating the value of the permanent improvements required to be placed on the tract, as above stated. If the entry comprises two noncontiguous tracts, the residence may be on either.

Where satisfactory final proof is received involving several homestead entries and one or more of the entries involved is under the stock raising act, separate final certificate covering the stock raising entry or entries will be issued in accordance with Circular No. 917.

ADDITIONAL ENTRIES BEFORE PROOF

8. (*a*) Under section 4 of the act any person having a homestead entry for land which shall have been designated under this act, upon which he has not submitted final proof, may make entry of contiguous designated lands, which, with the area of his original entry, shall not exceed 640 acres; if there is not sufficient vacant unreserved land of the proper character adjoining his pending claim unapplied for by any other person, he may make up the deficiency by entering one or more other tracts lying within a radius of 20

miles from said claim, but the rule of compactness specified in paragraph 5 hereof must be complied with.

One holding an entry under section 7 of the enlarged homestead act upon which residence is required, or an additional entry under section 6 of act of March 2, 1889 (25 Stat. 854), may make an additional entry under this section for such an area of designated land as when added to the area in the former entries will not exceed 640 acres, regardless of whether or not the land in the original perfected entry may be designated under the stock raising act.

Section 2 of the act of March 4, 1923 (42 Stat. 1445), provides that a person who made a homestead entry for 160 acres or less of land in a national forest which is of the character contemplated by the stock raising act, who has not submitted final proof upon his existing entry, may make an additional entry under this section of the act for such an area not in a national forest and within a radius of 20 miles from the original entry as, when added to the area of the original entry, will not exceed 640 acres.

(*b*) On submission of proof on the additional entry, claimant must show residence on one of the tracts to the extent ordinarily required, but will be entitled to credit for residence on the original tract before or after the date of the additional entry; he must also show improvements on the additional tract or tracts to the value of $1.25 for each acre thereof. Proof on the additional entry may be submitted within five years after its allowance, when the requisite residence can be shown, but not before submission of proof on the original. Proof on the original entry must be submitted under the provisions of the law pursuant to which it was made, and within its life, as limited thereby; but, subject to that condition, one proof may be submitted on the two entries jointly.

The marriage of a woman does not disqualify her from making an additional entry under this section; and husband and wife may make entries thereunder, additional to their respective pending entries, if an election as to residence on one of the original entries, as provided by the act of April 6, 1914 (38 Stat. 312), as amended by act of March 1, 1921 (41 Stat. 1193), has been accepted.

ADDITIONAL ENTRIES AFTER PROOF

9. (*a*) Under section 5 of the act any person who has submitted final proof on an entry under the homestead laws for land designated under this act, who owns and resides upon said land, may enter lands so designated contiguous thereto, which, with the area of his original entry shall not exceed 640 acres; the entry may be made to cover land incontiguous to the original claim, in whole or in part, under the same rules set forth in paragraph 5 hereof.

Section 2 of act of March 4, 1923 (42 Stat. 1445), provides that a person who made a homestead entry for 160 acres or less of land in a national forest which is of the character contemplated by the stock raising act, who has submitted final proof and who owns and resides upon said homestead entry, may make an additional entry for such an area outside of a national forest and within 20 miles of the perfected entry as, when added to the area of the original entry, will not exceed 640 acres.

One who perfected an entry, by residence thereon, under section 7 of the enlarged homestead act or section 6 of the act of March 2, 1889 (25 Stat. 854), and who owns and resides on the land thus acquired, may make an additional entry hereunder for such an area of designated land as when added to the area in the former entries will not exceed 640 acres, regardless of whether or not the land in the entry first perfected may be designated under the stock raising act. However, the entry last perfected must be so designated.

If the applicant does not own his last entry perfected by residence thereon or owns same and does not reside thereon, he is not qualified to make additional entry under this section.

One who has made an additional entry under either section 4 or section 5 of the act is qualified to make an additional entry for such a quantity of designated land within 20 miles of the original entry as when added to the area formerly acquired will not exceed approximately 640 acres.

A married woman may make entry under section 5 of the act.

(*b*) In order to acquire title to the land it is necessary only that claimant show the expenditure on the additional tracts of $1.25 per acre for improvements of the kind described in paragraph 7. At least half of such expenditures must be made within three years after allowance of the entry. Proof may be submitted at any time within five years after the entry is allowed.

Where satisfactory proof has been submitted on the original entry the additional entry may be perfected under this section of the act regardless of the question whether it was 3-year, 5-year, or commutation proof.

(*c*) An additional entry made under the first proviso to section 3 of the act by one who owns but does not reside on his original entry may be amended to stand and be completed under section 5 of the act, on proper application and showing of facts, in the event bona fide residence is resumed on the original entry before the intervention of an adverse claim.

ENTRIES IN LIEU OF RELINQUISHED LANDS

10. (*a*) Under section 6 of the act a person, otherwise qualified to make homestead entry, who has a perfected or an unperfected homestead entry for less than 640 acres of land which shall have been designated under this act, on which he resides, and which he has not sold, and who is unable to make a full additional entry under the provisions of section 3 thereof, for the reason that there is not sufficient available land within the 20-mile limit to afford him the area to which he is otherwise entitled (as above indicated), may make an entry for the full area of 640 acres within the same land district, provided he shall relinquish the original entry, if not perfected, or reconvey the land to the United States, if final certificate has issued therefor.

(*b*) If proof has not been submitted on the original entry he must with his relinquishment furnish his affidavit, corroborated, so far as possible, by two witnesses, showing that at the time of filing application under this act he resided upon the land covered by said entry;

that he has not sold, transferred, or conveyed the land or any interest therein, or made a contract or agreement so to do; and that there is not within 20 miles of the land embraced in his original entry a tract of land of the character described in this act of area sufficient to make up, with such original entry, the area he is entitled to enter.

(*c*) If final certificate has issued on the first entry, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant has not transferred any interest in the land sought to be reconveyed and that there are no liens, unpaid taxes, or other encumbrances charged against it. Moreover, reconveyance of the land must be made by deed executed by the entryman, and also by his wife if he be married, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated. The deed of reconveyance should accompany the application but should not be recorded until directed by this office. On acceptance of an application of this character the deed will be returned for recording and refiling in your office before the entry is allowed.

(*d*) Where proof has been submitted but final certificate has not issued, the relinquishment must be accompanied by an abstract of title or certificate of recording officer, as above specified.

(*e*) Where the former entry for land already designated under this act has not been perfected and is relinquished, you will allow the application for entry under this act if no other objection appears. Where final certificate has issued on the former entry you will promptly forward the application and accompanying papers for consideration by this office.

(*f*) Where the original entry was pending and is relinquished, the land will become subject to appropriation (if not embraced in a withdrawal) when the new entry is allowed. Where the original entry was patented and is reconveyed, an order for restoration of the land will be made upon receipt of a report that the substitute entry has been placed of record.

(*g*) An application under this provision of the law may be accompanied by petition for designation under the act of the land sought and of the tract covered by the former entry, as hereinafter explained.

(*h*) Proof on an entry allowed under this section is governed by the same rules as though it were an original entry under this act.

(*i*) The fact that an applicant owns more than 160 acres of land, acquired otherwise than through homestead entry, does not exclude him from the privileges granted by this section.

PETITIONS FOR DESIGNATION

11. (*a*) The proviso to section 2 of the act confers a preference right of entry upon a person pursuant to whose petition land has been designated. Any person qualified to make an original or an additional entry under this act may file an application to enter a compact body of unappropriated, unreserved, surveyed public land of the character described, which has not already been designated

under this act, accompanied by petition, in duplicate, for the designation of such land and of the tract included in any former entry.

(*b*) He must, when he files said application, pay the regular fee and commissions; and if the tract is ceded Indian land he must at that time pay that part of its price ordinarily required when entry is made. The entire amount paid will be carried in the "Unearned money" account and will be repaid by the receiver if the application be not allowed.

(*c*) All petitions for the designation of lands presented on behalf of individual applicants should be filed in the local land office. Individual petitions for designation will not be considered unless they are filed in connection with applications to make entry under the act.

12. (*a*) The petition must be in the form of an affidavit, executed in duplicate and corroborated by at least two witnesses who are familiar with the character of the land. For convenience in filing it is desired that petitions be prepared on sheets not over 8½ by 11 inches in size, with margins of 1 inch on the top and the left-hand side. The petition must contain the name and the post-office address of the applicant, a description by legal subdivisions of all the lands involved properly listed by entries with the serial number of each former entry. If the application contemplates the making of an original entry under this act, or if the application relates to a contiguous original and additional entry, only one petition need be filed. If, however, the lands which it is desired to have designated are comprised in two noncontiguous tracts, an additional copy of petition should be filed for each such tract.

(*b*) The petition should set forth in detail the character of each legal subdivision included in an application to make entry under this act and in any former homestead entries made under other acts. The information called for may be shown by means of a map or diagram whenever the facts can be advantageously presented thereby. Photographs of the land, where available, are useful in indicating its character and topography, and when presented should be located with reference to the land lines and to the direction in which they were taken. The location of corners of the public survey by which the applicant has determined the situation or legal description of the land should be indicated on the map or stated in the petition. It is believed that the requirements of these regulations as to furnishing a description of the land can properly be met only by a careful examination of the lands by the applicant, preferably assisted by a competent surveyor. Petitions which are deficient will be returned to the applicant for correction, or he may be required to furnish supplemental affidavits concerning matters not discussed or which have not been described in sufficient detail. Care should be exercised in the preparation of petitions, as inaccuracies and omissions will tend to retard action, while false or misleading statements may lead to the rejection of the application.

(*c*) In the preparation of petitions attention should be given to the following considerations:

Surface water supply.—The relation of the lands to surface streams or springs rising on or flowing across or along them should be indicated, and the location of such water supplies should be accurately described with relation to the lines of the public surveys. If there is no surface water on the land, the location of such near-by sources of water supply upon which the applicant relies or which he proposes to use for stock-watering purposes should be described.

Underground water supply.—The location of any well or wells which may be present on the land should be described and information furnished in each instance concerning the depth of well, present depth of water, and yield. If there are no wells on the land, information should be furnished concerning any wells in the vicinity which may afford an indication of the probable depth of water on the lands applied for.

Irrigability.—If any part or parts of the land is irrigated, the location and source of water supply of such areas should be stated and the area irrigated in each legal subdivision indicated. If any portion of the land is under constructed or proposed irrigation ditches or canals, is crossed thereby, or is adjacent thereto, the relation of the lands to such water conduits and the possibility of their irrigation therefrom should be explained. If the lands are situated near or are crossed by streams which might afford a water supply for their irrigation, full particulars should be given as to the quantity of water available for this purpose and as to whether or not it can be applied to the lands. If artesian wells exist on or near the land or underground water is found under any part of the land at depths of less than 50 feet, the practicability of irrigating the land from underground sources should be fully discussed.

If the applicant has filed a notice of water appropriation or has acquired a right to use water for domestic, stock-watering, or irrigation purposes on the lands under the State law, a copy of such notice of water appropriation or water right should be furnished. Any attempts to irrigate and reclaim the land under the provisions of the desert land act should be described and the reasons for lack of success stated.

Timber and vegetation.—The character of the surface of the land in both the original and the additional entry as it is at the time of application under this act and of the tree and plant growth thereon should be described and the approximate area in each legal subdivision which is of such character that it is included in each of the following general classes should be shown: Lands containing merchantable timber; lands containing timber which is not merchantable; lands covered with mesquite or similar growth; lands covered with sagebrush; open grass lands; lands covered with greasewood and allied plants; rocky wastes; alkali flats; sand dunes; lands in agricultural crops or under cultivation. If none of the above terms are applicable to any portion of the land, details of its character should be furnished. Where timber occurs an estimate of the amount of such timber on each legal subdivision should be made.

Agricultural value.—The acreage in each legal subdivision which is capable of producing agricultural or forage crops by cultivation should be stated by the applicant, as well as the number of acres which have actually been cultivated. If the applicant or his predecessors in interest have made agricultural use of the land in the original entry, the area planted, the kind of crops raised, the yield, and the value should be stated for the last five seasons, or such part thereof as may have been under cultivation.

Grazing value.—The applicant should indicate the grazing character of all the lands involved by describing them as winter, summer, spring, fall, or permanent range. If the land or any part thereof has been used for grazing, the nature and extent of such use should be stated. The applicant should also furnish an estimate of the number of head of cattle or other livestock which, in his opinion, can be maintained on the land throughout the year.

(*d*) The applications for entry, if otherwise allowable and accompanied by petitions for designation which are in all respects regular, will be suspended by you and retained in your office. You will forward the two copies of the petition to this office and to the Geological Survey, respectively. Where defects appear in the petitions—especially (as to additional entries) failure to refer in the petition to the tract originally entered—you will call for supplemental evidence, as in other cases; if this is not furnished, you will forward all the papers to this office for consideration, making proper recommendations in connection therewith. If there are defects in an application, aside from the accompanying petition, you will take action in the same manner as with other defective applications for entry.

(*e*) No other entry of the land will be allowed before the application has been finally disposed of. However, later applications therefor should be received and suspended. If withdrawal of an application under this act be filed, you will promptly notify this office thereof, inviting special attention to the pendency of the petition for designation, and will close the case on your records. Prior to final action on the application the applicant's homestead right will be in abeyance, and he will not be entitled to exercise same elsewhere, nor will he be permitted to have two applications under this act pending at the same time.

When designation of all the land involved has become effective you will allow the entry unless the records show that there is possibility of a claim of preferential right for some part of the land under section 8 of the act, in which case the application will remain suspended until the expiration of the preferential right.

Where the land has been designated by the Secretary without deception or fraud on the part of the entryman and the entry has been allowed as a result thereof it will not be subject to contest on a charge that such designation was improperly or erroneously made.

(*f*) If the Geological Survey advises this office that it is unable to classify the land, or some part thereof, as subject to designation, this office will, through the proper local land office, furnish the applicant with a copy of the survey's report and will allow him 30 days within which to file response. At the applicant's option, he may either appeal from the finding to the Secretary of the Interior, alleging errors of law, or he may present further showing as to the facts, accompanied by such evidence as is desired tending to disprove the adverse conclusion reached by the survey.

Such appeal or showing, if filed, will be forwarded by you to this office, whence it will be transmitted to the Geological Survey for further consideration. That bureau will consider the evidence submitted, and if it warrants such action will recommend designation of the land, or, if its conclusion be still adverse, will transmit the record to the Secretary with report. The case will thereafter be considered as having the status of an appeal pending before the Secretary's office.

In cases where the applicant fails to furnish a showing or to appeal from the order of this office requiring him to furnish it within the 30 days prescribed or where the Secretary refuses designation final action will be taken and the case closed by this office on the basis of the designations which may have been theretofore made.

PREFERENTIAL RIGHTS FOR ADJOINING LAND

13. (*a*) Under section 8 of the act any person who, as the holder of a homestead entry or as patentee thereunder, is entitled to make additional entry under this act has a preferential right to enter lands lying contiguous to his original tract and designated as subject to the act, said right extending for a period of 90 days after the designation takes effect; it covers such contiguous land as the person is qualified to enter under section 4 or section 5 of the act. This right is superior to the right of entry accorded a person who had filed application for entry of the land under this act accompanied by petition for its designation. However, before a designation has been made the land is subject to settlement and entry under any other laws applicable thereto unless there is pending such application and petition.

(*b*) After the designation of land takes effect no application therefor will be allowed under this act or under any other law until 90 days shall have elapsed if the records show that it may conflict with a preferential right to be claimed on account of an entry for adjoining land. Otherwise an application under this act may be allowed immediately on the taking effect of the designation.

Where there is conflict between an application for a tract by a holder of adjoining land claiming a preferential right and an application by one asserting no such right you will allow the former and reject the latter, subject to the usual right of appeal.

Where there is conflict between the applications of two or more persons claiming such preferential right of entry you will, after the expiration of the 90-day period, notify the various applicants that they will be allowed 30 days from receipt of notice within which to agree among themselves upon the division of the tracts in conflict, by subdivisions and that such division will be made by this office in the absence of an agreement. Unless an amicable adjustment is made, you will, pursuant to this notice, forward all the papers to this office for consideration, making on your schedules the necessary notations as to the method of transmittal. This office will thereupon make an equitable division of the different subdivisions among the applicants so as to equalize as nearly as possible the areas which the different applicants will have acquired by adding the tracts thus allotted to those originally held or owned by them. An appeal will be allowed from the action of this office.

(*c*) Where there is but one subdivision adjoining the lands of two or more entrymen or patentees entitled to exercise preferential right of entry and seeking to assert same, said subdivision will be awarded to that person who first files application therefor with an assertion of such right.

(*d*)[21] A preferential claim can not be recognized unless, on the date the designation of the land in question becomes effective, the land originally entered by the claimant has been designated under the act or there is pending a petition by such claimant for the designation of the land originally entered by him.

(*e*) A settlement right under any other applicable law, if initiated prior to designation or application and petition, will, if asserted in time, defeat a claim of preference right hereunder. This right may not be defeated by settlement pursuant to an unallowed stock-raising application.

(*f*) The preference right of entry accorded to contestants by the act of May 14, 1880 (21 Stat. 140), is in no way affected by any of the provisions of this act.

(*g*) The fact that a person presents, with his application for entry, under this act, the relinquishment of a former entry covering the tract sought confers upon him no preference right for entry of the land, and such application is subject to the preferential right given by section 8 of the stock-raising homestead law.

(*h*) An applicant for additional entry can not assert a preferential right as against a claimant whose application was filed before the date of the original entry of the former.

(*i*) The preferential right granted by section 8 of this act is superior to the preferential right granted to ex-service men of the war with Germany by Public Resolution No. 36, approved January 21, 1922, which amended joint resolution of February 14, 1920 (41 Stat. 434).

(*j*) A person holding an additional entry under section 6 of the act of March 2, 1889 (25 Stat. 854), or an additional entry under section 7 of the enlarged homestead act, on which additional entry claimant is residing, or who owns and resides on land acquired under such entries, is entitled to a preferential right to enter stock-raising land adjoining such entries regardless of whether or not the land in the original entry under the general homestead laws may be designated under the stock raising act.

DISPOSAL OF COAL AND OTHER MINERAL DEPOSITS

14. (*a*) Section 9 of the act provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting.

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[21] In adopting this rule on Aug. 29, 1921, the department directed that it was to be effective only from Sept. 1, 1921.

It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond, the form whereof will be found printed in the appendix hereto, must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279), as amended by the act of March 23, 1910 (36 Stat. 241), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the register and receiver of the local land office of the district wherein the land is situate, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land no objections are made by such entryman or owner of the land and filed with the register and receiver against the approval of the bond by them, they may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said local officers, they will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration by them, they shall find and conclude that the proffered bond ought not to be by them approved, they will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Commissioner of the General Land Office from their action in disapproving the bond so filed and proffered. If, however, said local officers, after full and complete examination and consideration of all the papers filed, are of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof by them do not set forth sufficient reasons to justify them in refusing to approve said proffered bond, they will, in writing, duly notify the homestead entryman or owner of the land of their decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Commissioner of the General Land Office. If appeal from the adverse decision of the register and receiver be not timely filed by the person proffering the bond, the local officers will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the register and receiver adverse to the contentions of said homestead entryman or owners of the lands, said register and receiver may, if all else be regular, approve the bond.

The coal and other mineral deposits in the lands entered or patented under the act will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry, unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

(*b*) Every application to make homestead entry under this act must contain a statement to the effect that the entry is made subject to a reservation to the United States of all the coal or other minerals in the land, together with the right to prospect for, mine, and remove the same; that no part of the land is claimed, occupied, or being worked under the mining laws; and that the land is unoccupied and unappropriated by any person claiming the same under the public land laws other than the applicant. (See Forms 4-016 and 4-016a.) The face of final certificates issued on every homestead entry made under the provisions of this act must bear the following:

> Patent to contain reservation of coal and other minerals, and conditions and limitations as provided by act of December 29, 1916 (39 Stat. 862).

There will be incorporated in patent issued on homestead entries under this act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

Mineral applications and coal-declaratory statements and applications under the coal and mining laws for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to you, the following notation:

> Patents shall contain appropriate notations declaring same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

Like notation will be made by the register and receiver on final certificates issued by them for the reserved mineral deposits disposable under and subject to the provisions of this act.

DRIVEWAYS FOR STOCK

15.[22] The reservation of driveways for stock provided for in section 10 of the act will be considered on application of parties interested, on recommendation of other departments of the Government, or on the reports of agents of this department. Lands withdrawn for driveways for stock or in connection with water holes can not thereafter be entered, and all applications to make entry under this act for land so withdrawn, whether filed before or after the withdrawal, will be rejected.

SETTLEMENT AND IMPROVEMENT PRIOR TO DESIGNATION

16. The act of June 6, 1924 (43 Stat. 469), permits a person who applies to make entry under the stock-raising homestead act for an undesignated tract of land and files therewith a petition for its designation to occupy the land prior to its designation, provided he actually establishes residence on the land and continues to reside thereon during such occupation; and if the petition for designation be denied, the settler may change his application to one under the enlarged homestead act or to one under the ordinary provisions of the homestead law, provided he is qualified to make such an entry.

An applicant who desires to change his application to one under the enlarged homestead act must file in the local office before final action is taken on the stock-raising homestead application, a supplemental application on the form prescribed by the department for making such entries, and, if there be pending a junior application to make entry under any law other than the stock-raising homestead act, the applicant must also file his affidavit, corroborated by two persons, setting forth therein the date when he established actual residence on the land and to what extent the residence was thereafter maintained. The affidavit should describe the legal subdivisions on which residence was maintained and on which the improvements are located. An entry under the enlarged homestead act may not include two incontiguous tracts, except additional entries may embrace two or more incontiguous tracts if they are contiguous to the original entry.

If the land sought under a change of application has not been designated under the enlarged homestead act, a proper petition for its designation must be filed in accordance with existing regulations.

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[22] See amendment, p. 1594. Also see Circular No. 1189, p. 848.

An entryman under the stock-raising homestead act may claim credit for residence on the land and improvements made after the date of his application and petition for designation.

MISCELLANEOUS PROVISIONS

17. Proofs on entries under this act must be submitted within five years after the dates of their allowance, and no such entry is subject to commutation.

18. Every person applying for entry under this act who has heretofore made entry or entries under the homestead laws must furnish a description thereof or such data as will enable this office to identify it or them.

19. A person who has made entry under section 6 of one of the enlarged homestead acts may make an additional entry under the provisos to section 3 or under section 4 or 5 of this act, provided all be designated as stock-raising land; but he must reside on the land entered under this act or on that originally entered, to the extent required by the 3-year homestead act.

20. Where a person made an additional entry under section 6 of the act of March 2, 1889 (25 Stat. 854), for lands stock-raising in character, it may be used as a basis for an additional entry under the stock-raising act for the difference in area between the area in the former homestead entries and 640 acres, even though the land in such section 6 entry be more than 20 miles from the land in the original entry, but the land in the additional stock-raising entry must be within 20 miles of the land in such section 6 entry, and it is immaterial as to whether or not the land in the first or original entry is stock-raising in character.

21. A section 7 additional entry under the enlarged homestead act on which residence is being maintained may be the basis for an additional entry under the stock raising act, regardless of whether or not the land in the original entry may be designated under the stock-raising act and whether or not the land in the section 7 entry is more than 20 miles from that in the original entry.

22. You will not allow, without instructions from this office, any application to contest an entry under the stock-raising homestead act where fraud and misrepresentation in securing the designation of the land are alleged. On receipt of such an application to contest, you will transmit the papers to this office by special letter with a request for instructions, making appropriate reference hereto. Such applications to contest will be rejected where it appears, from the records of the department, that the designation of the land was preceded by and based on a field investigation.

Very respectfully,

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

[Act and forms omitted.]

[Reported, 51 L. D. 65]

CIRCULAR NO. 983 [23]

MODIFYING CIRCULAR NO. 913, ENTITLED "LAND IN PETROLEUM RESERVES NOT SUBJECT TO ENTRY UNDER THE STOCK-RAISING HOMESTEAD ACT"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 12, 1925.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Section 12 of an act of Congress (43 Stat. 809), approved February 7, 1925, reads as follows:

> That existing entries allowed prior to April 1, 1924, under the Stock Raising Homestead Act of December 29, 1916 (Thirty-ninth Statutes at Large, page 862), for land withdrawn as valuable for oil or gas, but not otherwise reserved or withdrawn, are hereby validated, if otherwise regular: *Provided*, That at date of entry the land was not within the limits of the geologic structure of a producing oil or gas field.

In view thereof, paragraph 2 of Circular No. 913, dated February 2, 1924, entitled "Land in petroleum reserves not subject to entry under the stock-raising homestead act," which reads—

> As to stock-raising entries heretofore allowed for land within the limits of petroleum reserves, you will, on the submission of satisfactory final proof, forward all papers to this office, without the issuance of final certificate—

is hereby modified to read:

> As to entries allowed prior to April 1, 1924, under the stock-raising homestead act of December 29, 1916 (39 Stat. 862), for land withdrawn as valuable for oil or gas but not otherwise reserved or withdrawn, if otherwise regular, on submission of satisfactory final proof, you will issue final certificate and note on the face thereof "Validated by section 12, act of February 7, 1925." However, if at date of the entry, the land was within the limits of the geologic structure of a producing oil or gas field, you will not issue the final certificate but will forward all papers to this office.

This act does not validate or protect any stock-raising homestead entries allowed after April 1, 1924. You will report such cases, if any be pending in your office, for appropriate action. Care should be exercised in future not to allow any stock-raising homestead entries within the limits of lands withdrawn or designated as valuable for oil or gas, and applications for such lands should be rejected when presented.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved March 12, 1925.

E. C. FINNEY,
First Assistant Secretary.

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[23] This circular amended Circular No. 913, of Feb. 2, 1924 (50 L. D. 261), so as to provide, among other things, that—

Care should be exercised in future not to allow any stock raising homestead entries within the limits of lands withdrawn or designated as valuable for oil or gas, and applications for such lands should be rejected when presented.

In the case of Clifton W. McCoy, Vernal 09771, the department by decision of June 16, 1927, referring to the statement above quoted, said:

The clause "designated as valuable for oil or gas" as used in the instructions quoted refers only to areas which have been designated as within the limits of producing oil or gas fields, and has no application to lands which have been merely classified as mineral valuable as a source of petroleum and nitrogen.

[Reported, 51 L. D. 84]

CIRCULAR NO. 990

SECOND HOMESTEAD ENTRIES—ACT OF FEBRUARY 25, 1925 (43 STAT. 981)

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 2, 1925.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress approved February 25, 1925 (43 Stat. 981), which provides:

> That from and after the passage of this act any person who has heretofore entered under the homestead laws and paid a price equivalent to or greater than $2.50 per acre, lands embraced in a ceded Indian reservation, shall, upon proof of such fact, if otherwise qualified, be entitled to the benefits of the homestead law as though such former entry had not been made: *Provided,* That the provisions of this act shall not apply to any person who has failed to pay the full price for his former entry or whose former entry was canceled for fraud.

2. A person claiming the right of second homestead entry pursuant to the provisions of this act must furnish a description of the land included in his perfected entry or data from which it can be identified, and he must state that he paid $2.50 or more per acre for the tract, but it is not necessary that he name the precise price paid. If the former entry embraced tracts appraised at less than $2.50 per acre and tracts appraised at more than $2.50 per acre, a second entry hereunder is not allowable unless the aggregate sum of the appraised prices of the former entry equals $2.50 per acre or more.

3. A second entry is not allowable unless the first entry was made prior to February 25, 1925, and unless satisfactory final proof has been submitted thereon and the entire price of the land included therein has been paid prior to the date of the application for second entry.

4. The act has no application if the first entry be canceled. Such cases will be governed by the general statutes allowing second entries.

5. If the original tract lies within your district, you will pass upon the application and will allow the entry if such action be proper; if said tract be not in your district you will forward the application to this office for consideration.

6. A person who is entitled to the benefits of this act may at his option make second entry under either the general homestead law, the enlarged homestead act, or the stock-raising homestead act. Compliance with the law must be shown as though it were an original entry.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 2, 1925.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 264]

CIRCULAR No. 1037

HOMESTEAD ENTRYMEN PLACED UNDER JUDICIAL RESTRAINT—CIRCULAR NO. 570 (46 L. D. 224) MODIFIED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 31, 1925.

Registers, United States Land Offices:

Departmental decision of July 31, 1925 (51 L. D. 174), upon the appeal of George L. Kile, modified instructions of October 20, 1917 (46 L. D. 224), relating to homestead entrymen who are placed under judicial restraint.

Pursuant to the said decision, General Land Office Circular No. 570 (unpublished), issued November 3, 1917, which promulgated the instructions of October 20, 1917, supra, is hereby amended as follows:

> Since under said decision the period of suspension of an entry is no longer to be concurrent with the period of the entryman's incarceration but is left to the discretion of the Commissioner of the General Land Office, you will hereafter, upon the filing of evidence of judicial restraint, refer the case to this office for consideration and appropriate action.

This office will then grant a period of suspension, having regard to the facts and circumstances adduced, with a view to affording the entryman full opportunity to perfect or dispose of his entry.

WILLIAM SPRY, *Commissioner.*

[See 48 L. D. 389]

CIRCULAR No. 541

SUGGESTIONS TO HOMESTEADERS AND PERSONS DESIRING TO MAKE HOMESTEAD ENTRIES

(In this revision of Suggestions to Homesteaders of February 18, 1924, necessary changes were made in paragraphs 1, 3, 4, 14, 16, 22, and 41)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 16, 1926.

1. Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

As each applicant is required to swear that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the affidavit that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

Information as to whether a particular tract of land is subject to entry may be obtained from the register of the land district in which the tract is located, either through verbal or written inquiry, but this officer must not be expected to give information as to the character and quality of unentered land or to furnish extended lists of lands subject to entry, except through plats and diagrams which he is authorized to make and sell as follows:

For a township diagram showing entered land only	$1.00
For a township plat showing form of entries, names of claimants, and character of entries	2.00
For a township plat showing form of entries, names of claimants, character of entry, and number	3.00
For a township plat showing form of entries, names of claimants, character of entry, number and date of filing or entry, together with topography, etc	4.00

Purchasers of township diagrams are entitled to definite information as to whether each smallest legal subdivision, or lot, is vacant public land. Registers are therefore required in case of an application for a township diagram showing vacant lands to plainly check off with a cross every lot or smallest legal subdivision in the township which is not vacant, leaving the vacant tracts unchecked. There is no authority for registers to charge and receive a fee of 25 cents for plats and diagrams of a section or part of a section of a township.

If, because of the pressure of current business relating to the entry of lands, registers are unable to make the plats or diagrams mentioned above, they may refuse to furnish the same and return the fee to the applicant, advising him of the reason for not furnishing the plats requested; that he may make the plats or diagrams himself or have same made by his agent or attorney; and that he may have access to the plats and tract books of the district land office for this purpose, provided such use of the records will not interfere with the orderly dispatch of the public business.

A list showing the general character of all the public lands remaining unentered in the various counties of the public-land States on the 30th day of the preceding June may be obtained at any time by addressing The Commissioner of the General Land Office, Washington, D. C.

All blank forms of affidavits and other papers needed in making application to entry or in making final proofs can be obtained by applicants and entrymen from the land office for the district in which the land lies.

In those public-land States having no district land office all business formerly handled by the district land offices is now being conducted by the General Land Office at Washington, D. C.

2. *Kind of land subject to homestead entry.*—All unappropriated surveyed public lands adaptable to any agricultural use are subject to homestead entry if they are not mineral or saline in character, are not occupied for the purposes of trade or business, and have not been embraced within the limits of any withdrawal, reservation, or incorporated town or city; but homestead entries on lands, within certain areas (such as lands in Alaska, lands withdrawn under the reclamation act, certain ceded Indian lands, lands within abandoned military reservations, agricultural lands within national forests, lands in western and central Nebraska, and lands withdrawn, classi-

fied, or valuable for coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals), are made subject to the particular requirements of the laws under which such lands are opened to entry. None of these particular requirements are set out in these suggestions, but information as to them may be obtained by either verbal or written inquiries addressed to the register of the land office of the district in which such lands are situated.

HOW CLAIMS UNDER THE HOMESTEAD LAW ORIGINATE

3. (*a*) Claims under homestead laws may be initiated by settlement on either surveyed or unsurveyed lands of the kind mentioned in the foregoing paragraph. Claims may also be initiated on surveyed lands of that kind by the filing of a soldier's or sailor's declaratory statement, or by the presentation of an application to enter.

(*b*) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions. However, an entry of land which has been designated under one of the enlarged homestead acts may contain 320 acres (see par. 43), and an entry of land designated under the stock-raising act may contain 640 acres. In western Nebraska 640 acres may be entered under the Kinkaid Act (explained in a special circular) without any designation of the land.

4. (*a*) Settlement is initiated through the personal act of the settler placing improvements upon the land or establishing residence thereon; he thus gains the right to make entry for the land as against other persons. A settlement on any part of a surveyed quarter section subject to homestead entry gives the right to enter all of that quarter section, but if a settler desires to initiate a claim to surveyed tracts which form a part of more than one technical quarter he should define his claim by placing some improvements on each of the smallest subdivisions claimed. When settlement is made on unsurveyed lands the settler must plainly mark the boundaries of all lands claimed. Within a reasonable time after settlement actual residence must be established on the land and continuously maintained. Entry should be made within three months after settlement upon surveyed lands or within that time after the filing in the district land office of the plat of survey of lands unsurveyed when settlement was made. Otherwise, the preference right of entry may be lost. Under the act of August 9, 1912 (37 Stat. 267), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon. A settlement right on not exceeding 640 acres of unsurveyed land designated as subject to the stock-raising act may be obtained by establishment and

maintenance of residence thereon, provided the boundaries of the tract claimed are plainly marked on the ground.

(*b*) Where a settlement claim has been duly initiated upon a tract of unsurveyed, unreserved, unappropriated public land by a person qualified to make homestead entry therefor, the settler is entitled to one or two leaves of absence during each residence year, aggregating not more than five months in each year after establishment of residence, in the same manner and upon the same conditions as persons having entries of record, as explained in paragraph 26. Detailed information regarding such leaves of absence is given in a special circular.

(*c*) Application for the survey of unsurveyed lands may be made in affidavit form and be addressed to the district cadastral engineer having local jurisdiction by any settler or settlers who can show the necessary qualifications. The applicant must show the location of the township by giving its approximate number, range, and meridian; that he is a bona fide settler therein; under what law he wishes to acquire the land; what the character of the land is and for what it is suitable; the number of the settlers residing upon the land desired to be surveyed; when his residence began and to what extent he has cultivated and improved the land claimed; that his application for survey of the lands described is made in good faith and not at the instance or in the interest or for the benefit of any other person.

5. Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any persons who have been honorably discharged after 90 days' service in the Army or Navy of the United States during the War of the Rebellion or during the Spanish-American War or the Philippine insurrection. Declaratory statements of this character may be filed either by the soldier or sailor in person or through his agent acting under a proper power of attorney, but the soldier or sailor must make entry of the land in person, and not through his agent, within six months from the filing of his declaratory statement, or he may make entry in person without first filing a declaratory statement if he so chooses. Such declaratory statements may also be filed in person by those who have been honorably discharged after 90 days' service in the Army, Navy, or Marine Corps during the operations on the Mexican border or in the war with Germany, but they can not file such statements by agent. If a declaratory statement is filed by a soldier or sailor in person, it must be executed by him before one of the officers mentioned in paragraph 16, in the county or land district in which the land is situated; if filed through an agent, the affidavit of the agent must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer using a seal and authorized to administer oaths and not necessarily within the county or land district in which the land is situated. If the soldier dies without having filed application for entry following his declaratory statement, such entry may be made by his widow, or in case of her death or remarriage by his minor orphan children, but *not* by his heirs or devisees.

BY WHOM HOMESTEAD ENTRIES MAY BE MADE

6. Homestead entries may be made by any person who does not come within either of the following classes:

(*a*) Married women, except as hereinafter stated.

(*b*) Persons who have already made homestead entry, except as hereinafter stated.

(*c*) Foreign-born persons who have not declared their intention to become citizens of the United States.

(*d*) Persons who are the owners of more than 160 acres of land in the United States.

(*e*) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs, as hereinafter mentioned; or minors who served in the Army or Navy during the World War, who may make entry under section 8 of the act of August 31, 1918 (40 Stat. 955).

(*f*) Persons who have acquired title to or are claiming, under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres; also, as to an entry under the stock-raising law, which may be allowed, provided its area does not make up with such other claims more than 800 acres, and that said claims do not contain as much as 320 acres. The rules as to limitation on the area of additional entries under the last-mentioned act are set forth in the special circular issued thereunder.

EFFECT OF MARRIAGE ON WOMEN'S RIGHTS

7. A married woman who has all of the other qualifications of a homesteader may make a homestead entry under any one of the following conditions:

(*a*) Where she has been actually deserted by her husband.

(*b*) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(*c*) Where the husband is confined in a penitentiary and she is actually the head of the family.

(*d*) Where the married woman is the heir of a settler or contestant who dies before making entry.

(*e*) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for one year next before the marriage and neither one abandons the land prior to filing application for entry.

8. The marriage of an entry woman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband

to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife can not maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they can not hold both entries unless they are entitled to the benefits of the act of April 6, 1914, as amended by the act of March 1, 1921 (41 Stat. 1193), explained in the next paragraph.

9. Where a homestead entryman or settler and a homestead entry woman or settler intermarry after each has fulfilled the requirements of the law for one year, the husband may (under the provisions of the act mentioned, Appendix No. 18) elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads. Instructions regarding the method of procedure under the act are found in a special circular.

10. Where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than one year, she may, under the provisions of the act of October 22, 1914 (38 Stat. 766), submit proof (by way of commutation or otherwise) on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made either by herself or by her husband. As to the method of procedure under that act, a special circular is issued.

11. A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

ENTRIES BY SOLDIERS AND SAILORS

12. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing on the lands applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged.

ADDITIONAL ENTRIES

13. (*a*) Regardless of the question whether the land involved has been designated as subject to the enlarged homestead act or the stock raising homestead law, any person otherwise qualified who has made final proof on an entry for less than 160 acres under the homestead laws may make an additional entry for such an amount of public lands as will, when added to the amount for which he has already made proof, not exceed in the aggregate 160 acres; the applicant therefor must give such data as will serve to identify his first filing. Residence, cultivation, and improvements must be performed as in the case of an original entry.

(*b*) Regardless, also, of designation of the land involved, an additional homestead entry may be made by a person for such an amount of public lands adjoining lands then owned and occupied by him under his original entry as will, when added to such adjoining lands, not exceed in the aggregate 160 acres. An entry of this kind may be made by any person who has not acquired title to and is not, at the date of his application, claiming under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the land then applied for, would exceed in the aggregate 320 acres, but the applicant will not be required to show any of the other qualifications of a homestead entryman. In connection with such an entry, all residence and cultivation may be had (before or after its date) on the original tract, provided the entryman continues to own it during the period in question.

(*c*) Where a person is entitled to make additional entry, as explained in paragraph 13 (*a*), he may enter land which has been designated under the enlarged homestead act of an area double that to which he would be otherwise entitled. (Appendix No. 13.)

(*d*) A person who has perfected a homestead entry for land of the character contemplated by the enlarged homestead acts, or who has a pending entry for such land, may make an additional entry for land of like character, as explained in paragraphs 47 and 48.

(*e*) A person who has perfected a homestead entry for land of the character contemplated by the stock raising act, or who has a pending entry for such land, may make an additional entry for land of like character to make up in the aggregate not more than 640 acres, as explained in a special circular issued under said act. (See par. 51.)

SECOND ENTRIES

14. (*a*) Where a person commuted a homestead entry before June 5, 1900, or paid the Indian price of the land entered before May 17, 1900, his homestead right is restored. See acts of June 5, 1900, and May 22, 1902 (31 Stat. 267, Sec. 2; and 32 Stat. 203, Sec. 2), and the act of May 17, 1900 (31 Stat. 179).

(*b*) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of Congress of September 5, 1914, which provides that the applicant must show to the satisfaction of the Secertary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. A special circular is issued regarding the procedure under said act.

(*c*) Where a person before February 25, 1925, made entry for land embraced in a ceded Indian reservation, and has at any time submitted proof thereon and has paid the full price of the land, being $2.50 or more per acre for the tract, he is entitled to make a second homestead entry. (Appendix No. 5.)

(*d*) Where a person's homestead right is restored under the conditions mentioned in this paragraph, he may make an entry under the general law, under the enlarged-homestead act, or under the stock-raising law, at his option.

ADJOINING FARM HOMESTEAD

15. An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

HOW HOMESTEAD ENTRIES ARE MADE

16. A homestead entry may be made by the presentation to the land office of the district in which the desired lands are situated of an application properly prepared on blank forms prescribed for that purpose and sworn to before either the register or acting register, or before a United States commissioner, a notary public, a judge or clerk or prothonotary of a court of record, or the deputy of such clerk or prothonotary, or before any magistrate, authorized by the laws of or pertaining to any State, District, or Territory of the United States to administer oaths, in the county, parish, or land district in which the land lies, or before any officer of the classes named who resides nearest or most accessible to the land although he may reside outside the county and land district in which the land is situated. Except as to the register or acting register the official character of any officer not using a seal of office must be certified to under seal by the clerk of the court having the record of his appointment and qualification. If the application is executed before a qualified officer within the boundaries of either the county or land district in which the land is located, no additional showing as to nearness or accessibility of such officer need be made, but if executed outside of both the county and land district the applicant must show by affidavit satisfactory to the Commissioner of the General Land Office that the officer before whom the application was executed was because of topographic or geographic conditions nearer or more accessible to the land. An application is not acceptable if executed more than 10 days before its deposit in the mails for filing in the district land office.

17. Each application to enter and the affidavits accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the

law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself. Additional statements as to the character of the land must be made in applications under the enlarged homestead acts and under the stock-raising law; but in the latter case, as the mineral in the land is reserved to the Government, no allegation as to same is made, but claimant must state that no part of the land is claimed, occupied, or being worked under the mining laws.

18. All applications by persons claiming as settlers must, in addition to the facts required in paragraph 17, state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens; but they are not required to state facts showing any other qualifications of a homestead entryman, and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

19. All applications by soldiers, sailors, or their widows, or the guardians of their minor children should be accompanied by proper evidence of the soldier's or sailor's service and discharge and of the fact that the soldier or sailor had not, prior to his death, made an entry in his own right. The application of the widow of the soldier or sailor must also show that she is unmarried and that the right has not been exercised by any other person. Applications for the children of soldiers or sailors must show that the father died without having made entry, that the mother died or remarried without making entry, and that the person applying to make entry for them is their legally appointed guardian.

20. Applications for entry must be accompanied by the proper fee and commissions. (See par. 41.) A receipt for the money is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

RIGHTS OF WIDOWS, HEIRS, OR DEVISEES UNDER THE HOMESTEAD LAWS

21. If a homestead settler dies without having filed application for entry, the right to enter the land covered by his settlement passes to his widow. If there be no widow, said right passes to his heirs or devisee. See paragraph 4 for the general rules regarding settlement claims.

22. If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

23. If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancellation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

24. The unmarried widow, or, in case of her death or remarriage, the minor children of soldiers and sailors who were honorably discharged after 90 days' actual service during the War of the Rebellion, the Spanish-American War, or the Philippine insurrection may file a declaratory statement in the manner explained in paragraph 5 and make entry as such widow or minor children, if the soldier or sailor died without making entry or failed to perfect an entry and was, at the time of his death, qualified to make another. The minor children must make a joint entry through their duly appointed guardian. If the widow files a declaratory statement and dies without having applied for entry, entry may be made on behalf of the minor children, but not by her devisees or other heirs.

RESIDENCE AND CULTIVATION REQUIRED UNDER THE HOMESTEAD LAWS

25. With the exception of adjoining farm homestead entries and additional entries allowed under certain conditions pursuant to the general law, the enlarged homestead acts and the stock-raising law,

a homestead entryman must establish residence upon the tract entered within six months after date of the entry, unless an extension of time is allowed, as explained in paragraph 35, and must maintain residence there for a period of three years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph 26.

When proof is submitted it must be shown that the homesteader is a citizen of the United States, provided, however, that a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one.

The act of September 22, 1922 (42 Stat. 1021), provides for the naturalization and citizenship of women married since that date, and in all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of such facts concerning the marital status and citizenship as may be rendered necessary by the provisions of that act, the text of which is printed in Appendix 19.

26. During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as five months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the local land office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than five months and filed notice of his return, he may, without any intervening residence, again absent himself—pursuant to new notice—for the remaining part of five months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than five months.

27. (*a*) Cultivation of the land for a period of at least two years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. A larger amount of cultivation is required on entries under section 6 of the enlarged homestead acts (see pars. 49 and 50), and the above-mentioned rules are not applicable to entries under the reclamation act. No cultivation whatsoever is required under the so-called Kinkaid Act, which affects only Nebraska, while the stock-raising homestead law requires no specific area of cultivation, only that the land has been actually used for raising stock and forage crops, and that it has been improved under certain conditions.

(*b*) The Secretary of the Interior is authorized to reduce the requirements as to cultivation. This may be done if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. An application for reduction upon the grounds indicated must be filed at the proper local land office on the form prescribed therefor, and should set forth in detail the special physical conditions of the land on which claimant bases his right to a reduction.

A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice of the misfortune and of its nature must be submitted to the register of the local land office, under oath, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman can not reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area. Nor will a reduction in the area of cultivation based on the physical conditions of the land be permitted if, at the date of the application to enter, the land was designated and subject to entry under the stock-raising act. In such cases, the homesteader should file application for change of the character of the entry to one under the stock-raising act, showing therein the nonadaptability of the land for cultivation; that the land does not contain any water holes, or other body of water needed or used by the public for watering purposes, and his consent to the entry being made subject to the reservation to the United States of all coal and other minerals in the land, together with the right to prospect for, mine, and remove the same. The application of the entryman should be in affidavit form, and the showing therein as to the character of the land should be corroborated by the affidavits of two witnesses.

(*c*) The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

CREDIT ON ACCOUNT OF MILITARY SERVICE

28. (*a*) A soldier or sailor of one of the classes mentioned in paragraph 5 who makes entry must begin his residence on the land entered by him within six months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within six months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments covering war periods), amount to three years; but if he was discharged on account of wounds or disabilities incurred in the line of duty, credit for the whole term of his enlistment may be allowed; however, no patent will issue to such soldier or sailor until there has been residence by him for at least one year, nor until a habitable house has been place upon the land.

(*b*) In each year of residence required of the soldier he is entitled to the same absence privilege as is enjoyed by other homesteaders.

(*c*) A soldier with 19 months' or more military service will be required to reside on the land at least 7 months during the first entry year; with more than 12 and less than 19 months, he must reside on the land 7 months during the first year and such part of the second year as, added to his excess over 12 months' service, will equal 7 months, and must cultivate one-sixteenth of the area the second year; with 7 and not more than 12 months, he must reside upon the land 7 months during each of the first and second years, and cultivate one-sixteenth of the area the second year; with 90 days and less than 7 months, he must reside upon the land 7 months during each year for the first and second years, and such part of the third year as, added to his service, will equal 7 months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. If he delays the submission of proof beyond the period of residence required, the cultivation necessary for the years elapsing before the submission of proof must be shown. He may apply for and receive a reduction in the area to be cultivated in the same manner and under the conditions required of other applicants. Where the entry is made under the stock-raising homestead act, the above rule with respect to residence will be applicable, but the soldier must make the improvements on the land required of other persons under that law, and show in lieu of cultivation that he actually used the land for raising stock and forage crops during the period that he was required to reside on the land. He must show, in any entry under the homestead laws, that he had a habitable house on the land at the date of submitting proof. These rights are conferred by section 2305 of the United States Revised Statutes as amended by act of June 6, 1912 (37 Stat. 123), act of February 25, 1919 (40 Stat. 1153), act of April 6, 1922 (42 Stat.

491), and by Public Resolution No. 79, approved December 28, 1922 (42 Stat. 1067).

(*d*) The act of June 16, 1898 (30 Stat. 473), copied in Appendix No. 21, provides that where a person has settled on the public lands under the homestead laws, his service in the Army, Navy, or Marine Corps during any war in which the United States may be engaged shall be construed as equivalent to residence and cultivation for the same length of time upon the tract entered or settled upon; also that no contest initiated against a homestead entry on the ground of abandonment shall be sustained, unless it be alleged and proved that the settler's alleged absence from the land was not due to his employment in such service.

(*e*) By the joint resolution of August 29, 1916 (39 Stat. 671), the provisions of said act are made " applicable in all cases of military service rendered in connection with operations in Mexico or along the borders thereof, or in mobilization camps elsewhere, whether such service be in the military or naval organization of the United States or the National Guard of the several States now or hereafter in the service of the United States."

(*f*) Section 1 of the act of July 28, 1917 (40 Stat. 248), grants credit for constructive residence and cultivation to homesteaders absent because of military or naval service during the World War and protects them from a charge of abandonment during such period; and section 2 of said act provides that where a homestead settler, applicant, or entryman dies while actually engaged in the military or naval service of the United States during any war in which the United States may be engaged, his widow, if unmarried, or in case of her death or marriage, his minor orphan children, or his or their legal representatives may proceed forthwith to make final proof upon the entry or application thereafter allowed, the death of the soldier or sailor while so engaged in the service of the United States being equivalent to a performance of all requirements as to residence and cultivation upon such homestead.

(*g*) The act of March 1, 1921 (41 Stat. 1202), authorizes homestead settlers, applicants, or entrymen who enlisted prior to November 11, 1918, in the United States Army, Navy, or Marine Corps during the war with Germany and were honorably discharged or separated because of physical incapacities due to service and for that reason are unable to return to the land, to make proof without further residence, improvements, and cultivation, at such time and place as may be authorized by the Secretary of the Interior.

(*h*) The act of September 29, 1919 (41 Stat. 288), as amended by section 2 of the act of April 6, 1922 (42 Stat. 491), grants to ex-service men of the late war who made or may hereafter make entry under the homestead laws or who initiate valid homestead claim by settlement or application, and thereafter enter upon a course of training under the vocational rehabilitation act or are furnished hospital treatment by the Government for wounds received or disabilities incurred in line of duty, a leave of absence from the homestead for the purpose of taking such course, or to receive hospital treatment by the Government, and allows the time while so engaged to be credited as constructive residence upon and cultivation of the homestead, subject to the condition that before title by patent may be granted the claimant shall have resided upon, improved, and cultivated the homestead for a period of at least one year. A person who is entitled to the benefits of this act should forward to the local district land office notice of his absence from the land and of the fact that he has been admitted to take a course of vocational training under the act of June 27, 1918 (40 Stat. 617), or that he is receiving hospital treatment by the Government, together with a certificate to that fact by the proper official. He should also file notice of his return to the land so that the local offices may make due notation on their records.

(*i*) No credit can be allowed for military service where commutation proof is offered.

29. A soldier or sailor making entry during his enlistment in time of peace is not required to reside personally on the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is three years old or until it has been commuted; but a soldier or sailor is not entitled to credit on account of his military service in time of peace. If such soldier has no family, there is no way by which he can make entry and acquire title during his enlistment in time of peace.

30. Widows and minor orphan children of soldiers and sailors who make entry based on the husband's or father's military or naval service must conform to the requirements specified for the soldier or sailor. The unmarried widow of a soldier or sailor of the Mexican border operations or of the war with Germany, or the unmarried widow or minor orphan children of a veteran of the Civil War, the Spanish-American War, or the Philippine insurrection, is entitled to the same privileges, under the homestead laws, as the deceased soldier or sailor if he died possessed of a homestead right. The adult child of a soldier has no special privileges in connection with the homestead laws on account of his father's military service.

COMPLETION OF ENTRY BY WIDOW OR HEIRS

31. Persons who make entry as the widows, heirs, or devisees of settlers are not required to reside upon the land entered by them, but they must improve and cultivate it for such period as, added to the time during which the settler resided on and cultivated the land, will make the required period of three years, and the cultivation must be to the extent required by the law under which the proof is offered. Commutation proof may, however, be made upon showing 14 months' actual residence and cultivation had either by the settler or the heirs, devisee, or widow, or in part by the settler and in part by the widow, heirs, or devisee.

32. Persons succeeding as widow, heirs, or devisees to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of three years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and

cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

HOLDERS OF PUBLIC OFFICE

33. Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

ENTRYMEN WHO BECOME INSANE

34. Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of three years after the date of the entry, he is required to reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

LEAVES OF ABSENCE

35. (*a*) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence can not be established on the land within six months after the date of the entry, additional time, not exceeding six months, may be allowed. An application for such extension must include the affidavits of the entryman, and two witnesses acquainted with the facts, which may be executed before any officer authorized to administer oaths and having a seal of office, though outside of the county or land district where the entry is situated. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first six months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(*b*) Leave of absence for one year or less may be granted by the register of the district land office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be sworn to by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located before an officer authorized to administer oaths and having a seal. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted can not be counted in his favor.

(*c*) The act of February 25, 1919 (40 Stat. 1153), authorizes the register of the district land office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, not less than 5 of which shall be in each year and proof must be submitted within 5 years. Instructions under said act are printed in Circular No. 636.

COMMUTATION OF HOMESTEAD ENTRIES

36. (*a*) All original, second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(*b*) The entryman, or his statutory successor, must, as a general thing, show substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house upon the claim and cultivation of not less than one-sixteenth of its acreage. However, the proof may be accepted where actual residence for the required period is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Land Department be fully satisfied of entryman's good faith, and provided no contest or adverse proceeding shall have been initiated for default in residence, or other good cause, prior to filing such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions, explained in paragraph 25, as to three-year proof.

(*c*) Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended, and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment can not be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889, or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

(*d*) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding five months of which he had given notices as provided by the act of June 6, 1912.

(*e*) A person submitting commutation proof must, in addition to certain fees, pay the price of the land; this is ordinarily $1.25 per acre, but is $2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(*f*) The claimant must show full citizenship, as in case of 3-year proof.

(*g*) The provisions of law explained in paragraph 27 (*f*) apply to commutation proof also.

(*h*) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat. 547), known as the Kinkaid Act; entries under the reclamation act of June 17, 1902 (32 Stat. 388); entries under the enlarged-homestead act (post, par. 43 et seq.); entries allowed on coal lands under the act of June 22, 1910 (36 Stat. 583), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat. 527; Appendix No. 4); second entries allowed under the act of June 5, 1900 (31 Stat. 267; Appendix No. 4); second entries allowed under the act of May 22, 1902 (32 Stat. 203; Appendix No. 4), when the former entry was commuted; entries within forests under the act of June 11, 1906 (34 Stat. 233); or entries under the stock-raising act of December 29, 1916 (39 Stat. 862).

WHEN PROOF MAY BE SUBMITTED

37. Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within five years. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued, and the case referred to the board of equitable adjudication for confirmation.

WHO MAY SUBMIT PROOF

38. (*a*) Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in paragraphs 10, 22, and 34. Final proof can be made only by citizens of the United States.

(*b*) Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

HOW PROOFS MAY BE MADE

39. Final or commutation proofs may be made before any of the officers mentioned in paragraph 16 as being authorized to administer oaths to applicants.

Any person desiring to make homestead proof should first forward a written notice of his desire to the register of the land office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

40.[h] The register will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the register. If this be a daily paper, the publication must be inserted in 30 consecutive issues; if daily, except Sunday, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues.

The first day of publication must be at least 30 days before the date set for proof, and a copy of the notice must be posted in a conspicuous place in the office of the register for at least 30 days before said date.

The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The register will be responsible for the correct preparation of the notice.

On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

FEES ON ENTRIES AND FINAL PROOFS

41. *Fees and commissions.*—When a homesteader applies to make entry he must pay in cash to the register a fee of $5 if his entry is for less than 81 acres, or $10 if he enters 81 acres or more. And in addition to this fee he must pay, both at the time he makes entry and final proof, a commission of $1 for each 40-acre tract entered outside of the limits of a railroad grant and $2 for each 40-acre tract entered within such limits. Fees under the enlarged homestead act and under the stock raising homestead act are the same as above, but the commissions are based upon the area of the land embraced in the entry. (See par. 43.) Where an entry is commuted no com-

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[h] See instructions of Oct. 19, 1929, p. 1149.

missions are payable, except in connection with certain ceded Indian lands, as to which inquiry must be made specifically at the proper district land offices. On all final proofs made before the register, or before any other officer authorized to take proofs, the register is entitled to receive 15 cents for each 100 words reduced to writing, and no proof can be accepted or approved until all fees have been paid.

In all cases where lands are entered under the homestead laws in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming the commissions due to the register and receiver on entries and final proofs, and the testimony fees under final proofs, are 50 per cent more than those above specified, but the entry fee of $5 or $10, as the case may be, is the same in all the States.

Remittances of moneys to the district land offices must be made in cash or currency; but certified checks when drawn in favor of the register of United States Land Office on National and State banks and trust companies, which can be cashed without cost to the Government, can be used. Likewise, the United States post-office orders are acceptable when they are made payable to the register and are drawn on the post office at the place where the register is located.[1]

ALIENATION OF LAND BY HOMESTEADER

42. The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (see Appendix No. 1), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned. A mortgagee who files notice of his interest in the district land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Land Department subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes, and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

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[1] See Circular No. 1008, p. 140.

Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

ENLARGED HOMESTEADS

43. The acts of February 19, 1909 (extended by later legislation to additional States), and of June 17, 1910 (36 Stat. 531), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be " arid."

The terms " arid " or " nonirrigable " land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as dry farming, and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

Lands containing merchantable timber, or valuable minerals other than coal, phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Entry may be allowed for the surface only of lands containing any of the minerals named. A legal subdivision will not be regarded as irrigable and excluded from designation under these acts because a minor portion of it is susceptible of irrigation unless said portion is at least one-eighth thereof. Where there is an application for additional entry after submission of final proof on the original the land covered by the original will not be regarded as irrigable, and excluded from designation, upon the ground that more than one-eighth of any subdivision is irrigable, unless said original embraces the equivalent of 20 or more acres of land in a reasonably compact body that can be thoroughly irrigated and reclaimed.

DESIGNATION OF LANDS—PETITIONS

44. From time to time lists designating the lands which are subject to entry under these acts are sent to the registers in the States affected, and they are instructed immediately upon the receipt of such lists to note the same upon their tract books. In the order of designation, a date is fixed on which it will become effective, and at that time the land becomes subject to entry under the act.

Under the act of March 4, 1915 (38 Stat. 956, Appendix No. 17), a person may file an application for entry under the enlarged-homestead act of a tract of surveyed land which has not been designated thereunder, accompanied by a petition for its designation, or he may file application for additional entry, though part of the land involved has not been designated, accompanied by like petition. He thus secures a preference right of entry if the land be thereafter designated. Attention is directed to the fact that an additional entry can not be allowed unless the tract first entered, as well as the one sought to be added, is designated, and therefore petitions should in all cases cover so much of both tracts as has not already been designated. Instructions prescribing the procedure under the act mentioned are found in a special circular; the act itself is copied in Appendix No. 17.

The fact that lands have been designated as subject to entry is not conclusive as to the character of such lands, and should it afterwards develop that the land is not of the character contemplated by the above acts the designation may be canceled; but where an entry is made in good faith under the provisions of these acts, such designation will not thereafter be modified to the injury of anyone who in good faith has acted upon such designation. Each entryman must furnish affidavit as required by section 2 of the acts.

COMPACTNESS—FEES

45. A tract included in an entry under the enlarged-homestead act or in an entry under the general law, and an additional under said act, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said act.

The acts provide that the fees shall be the same as those now required to be paid under the homestead laws; therefore, while the fees may not in any one case exceed the maximum fee of $10 required under the general homestead law, the commissions will be determined by the area of the land embraced in the entry. (See par. 41.)

FILING OF APPLICATIONS

46. Applications to make entry under these acts must be submitted on forms prescribed by the General Land Office; in case of an original entry, Form 4–003, and of an additional entry, Form 4–004.

The affidavit of an applicant as to the character of the land must be corroborated by two witnesses. It is not necessary that such witnesses be acquainted with the applicant, and if they are not so acquainted their affidavit should be modified accordingly.

The affidavit of the witnesses, as well as that of the applicant, must be executed before an officer authorized to administer oaths in homestead cases. (See par. 16.)

ADDITIONAL ENTRY FOR CONTIGUOUS LAND

47. (*a*) Under section 3 of the enlarged-homestead acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been so designated by the Secretary of the Interior, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be

accepted as equivalent to residence upon and cultivation of the additional. Credit for compliance with the law as to the additional entry may be allowed from the date of the filing of the application to enter.

(*b*) Where a person makes entry under the general provisions of the homestead laws, and before submission of proof on said entry makes an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof:

(*c*) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for one year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in paragraph 27 (*b*) are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(*d*) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for one year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i. e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than seven years from the date of the original entry.

(*e*) In instances where proof is first made on the original entry meeting the requirement of the homestead law respecting residence, no further showing in this particular will be exacted in making proof upon the additional entry; neither will a period of residence be exacted in proof upon the combined entry in excess of that required under the original entry.

(*f*) As above indicated, persons who have already submitted proof on their original entries are not, for that reason, deprived of the privilege of making additional entries. However, if a person makes entry for a tract contiguous to the one originally entered, he is required to show that he still owns and occupies (not necessarily resides upon) the tract first entered; in submitting proof on the additional filing, he is accorded credit for all residence on either tract, but must show cultivation of the additional tract itself to the extent and for the period (after the filing of the additional application) required by law. A special circular is issued under the act of March 3, 1915, allowing such additional entries (38 Stat. 956, Appendix No. 13).

ADDITIONAL ENTRY FOR INCONTIGUOUS LAND

48. (*a*) Under section 7 of the enlarged-homestead acts, added thereto by the act of July 3, 1916 (39 Stat. 344), and the act of September 5, 1916 (39 Stat. 724), a person who has submitted final

proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted. A special circular is issued relating to such additional entries. The act of July 3, 1916 (extended to Idaho by that of Sept. 5, 1916), is printed in Appendix No. 13.

A qualified person who owns and continues to reside on his original entry may make entry for two or more incontiguous tracts within 20 miles of his original entry, if unable to secure in one tract the entire area he is entitled to enter; but one who no longer owns his original entry, or who seeks land not within 20 miles therefrom, can not be allowed to enter incontiguous tracts under this act.

(*b*) Where a person has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, he may enter under the enlarged homestead act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated. (Act of Feb. 20, 1917, 39 Stat. 925, Appendix No. 13.)

Section 1 of the act of March 4, 1923 (42 Stat. 1445), provides that a person who has a subsisting or perfected homestead entry for 160 acres or less of land in a national forest which is of the character contemplated by the enlarged homestead act may make an additional entry for such an amount of land of the same character not in a national forest and within 20 miles from such entry as when the area thereof is added to the area of the original entry will not exceed 320 acres, but at time of making entry thereunder, after proof on the original entry, the applicant must show ownership of and residence on the land in the original entry.

ENTRIES NOT REQUIRING RESIDENCE

49. The sixth section of the act of February 19, 1909 (35 Stat. 639, Appendix No. 15), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as will render continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act; and no attempt will be made at this time to determine how far from the land an entryman will be allowed to reside, as it is believed that the proper determination of that question will depend upon the circumstances of each case.

During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. Proof may be submitted on entries of this class within seven years after their dates.

The rules relating to petitions for designation of lands, referred to in paragraphs 44 and 47, apply to section 6 of the enlarged-homestead act; applications to make entry thereunder will not be received until the date fixed in the order designating the land as subject to entry under said section, except when accompanied by petitions for designation, complying with the rules with reference thereto.

50. The sixth section of the act of June 17, 1910 (36 Stat. 531), as amended by the act of August 10, 1917 (40 Stat. 273), provides for the designation of 1,000,000 acres of land in the State of Idaho of the same character contemplated by section 6 of the act of February 19, 1909. One-sixteenth of the cultivatable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Entries made under section 6 of the act prior to August 10, 1917, may be perfected without a showing as to cultivation during the first year, but entryman must show cultivation of one-eighth of the area of the entry during the second year, one-fourth of the area of the entry during the third, fourth, and fifth years and until submission of final proof; but in such cases the entryman must show that he resided within 20 miles from the land in his entry, whereas under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho." Proof may be submitted on entries of this class within seven years after their dates.

STOCK-RAISING HOMESTEADS

51. (*a*) The act of December 29, 1916 (39 Stat. 862), provides that the Secretary of the Interior may designate unappropriated, unreserved public lands as "stock-raising lands," where the surface thereof is, in his opinion, chiefly valuable for grazing and raising forage crops, provided they do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, are of such character that 640 acres are reasonably required for the support of a family, and contain no water holes or other bodies of water needed or used by the public for watering purposes.

(*b*) Where lands are thus designated any person qualified to make entry under the homestead laws may make a homestead entry for not exceeding 640 acres thereof, and the fact that the tract sought may be valuable for coal or other minerals is not material, since all minerals are reserved to the United States.

(*c*) There is required compliance with the provisions of the general law with respect to residence and the erection of a habitable house. No specific amount of cultivation is required, but it must be shown, on submission of proof, that the entryman has made permanent improvements upon the tract, tending to increase its value for stock-raising purposes, of the value of not less than $1.25 per acre, half of which improvements must be placed there within three years after entry; also that the land has been used for three years for raising stock and forage crops.

(*d*) Preference right of entry through applications accompanied by petitions for designation may be secured in substantially the same manner as under the enlarged homestead law.

(*e*) The act provides for additional entries and for entries conditioned on the surrender of former filings. These matters, as well as the preferential right for additional entry of contiguous lands, are explained in a special circular issued under this act.

(*f*) Section 2 of the act of March 4, 1923 (42 Stat. 1445), provides that a person who made a homestead entry for 160 acres or less of land in a national forest which is of the character contemplated by the stock-raising act, who has not submitted final proof upon his existing entry, may make an additional entry under this section of the act for such an area not in a national forest and within a radius of 20 miles from the original entry as, when added to the area of the original entry, will not exceed 640 acres. An additional stock-raising entry may also be made after proof on such forest homestead entry if the applicant can show he is owner of and residing on the land in his original entry at the time of filing application for additional entry.

(*g*) An additional entry under section 6, of the act of March 2, 1889 (25 Stat. 854), or under the act of July 3, 1916 (39 Stat. 344), upon which residence has been or is maintained, may be the basis for a stock-raising additional entry for land within 20 miles of such additional entry.

SURFACE HOMESTEAD ENTRIES FOR COAL, OIL, OR GAS LANDS

52. Homestead applications for lands embraced in applications for coal, oil, or gas prospecting permits or leases when filed in the local land office must be suspended and forwarded to the General Land Office for consideration and instructions and all homestead applications for lands, classified as or known to be valuable for coal, oil, or gas, must be accompanied with the consent of the applicant that his application be allowed in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583), as to coal, or of the act of July 17, 1914 (38 Stat. 509), as to oil or gas. A stock-raising entry can not be allowed for lands included in a petroleum reserve or Naval petroleum reserve, but lands within such reserve other than a Naval petroleum reserve are subject to entry under section 2289 of the United States Revised Statutes, or under the enlarged homestead acts with a reservation of the mineral deposits in the land to the United States under the said act of July 17, 1914. All nonmineral applications for lands which have been or shall be designated by the department as being within the known geological structures of producing oil or gas fields, or for lands in an approved lease, must be rejected (by the register). Nonmineral applications found to be in conflict with prior coal, oil, or gas prospecting permit applications may be returned to the district office by the Commissioner of the General Land Office for allowance, if after due notice the mineral applicants make no objections and after proper consents to the reservation to the United States of the mineral in the land have been obtained from the homestead applicants together with consent that the application be subject

to the rights of the prior permittees or lessees, as the case may be, to use so much of the surface of the land applied for as is necessary in extracting and removing the mineral deposits without compensation to the homestead applicants for such use in accordance with section 29 of the act of February 25, 1920 (41 Stat. 437).

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

E. C. FINNEY,
First Assistant Secretary.

(Appendix containing acts omitted.)

FURNISHING COPIES OF CLAIMANT'S TESTIMONY IN PROTESTED STOCK-RAISING PROOFS—AMENDMENT OF CIRCULAR NO. 340

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 29, 1928.

Registers, United States Land Offices.

SIRS: In connection with the investigation of the improvements on stock-raising homestead entries our inspectors need a copy of the final proof testimony of the claimant, but not of the witnesses. You will, therefore, arrange to furnish a copy of the claimant's testimony to the division inspector, either by having the proof-taking officer make a carbon copy thereof or by having a copy made in your office. It is believed that in the great majority of cases the proof-taking officer will furnish you with a carbon copy without additional expense to the claimant.

Very respectfully,

THOS. C. HAVELL, *Acting Commissioner.*

CIRCULAR NO. 1170

INSTRUCTIONS RELATIVE TO PUBLICATION OF PROOF NOTICES UNDER ACT OF JUNE 11, 1906 (34 STAT. 233), IN HOMESTEAD ENTRY SURVEY CASES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 12, 1928.

Registers, United States Land Offices.

SIRS: Your attention is called to paragraph 12, Circular No. 263 (42 L. D. 331), which is the circular of instructions governing entries under the act of June 11, 1906 (34 Stat. 233).

It is observed that in publishing the notice of intention to submit final proof on entries for lands covered by homestead entry surveys the survey number is given followed by the description by metes and bounds. This results in a lengthy description, the cost of which often causes a real hardship to the entryman.

As a plat of the survey is posted on the land and in the respective United States district land offices, it is deemed sufficient in such publications to give the homestead entry number, list number, survey number, acreage, and the approximate description by section, township, and range numbers.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 1185

PROTECTION AGAINST CONTEST TO ENTRYMEN IN CERTAIN COUNTIES IN COLORADO WHILE ABSENT FROM HOMESTEAD ENTRY BECAUSE OF GRASSHOPPER OR CRICKET INVASION—ACT OF FEBRUARY 9, 1929 (45 STAT. 1156)

Department of the Interior,
General Land Office,
Washington, March 22, 1929.

Register, *Denver, Colo.*

Sir: Section 7 of the act of February 9, 1929 (45 Stat. 1156), provides as follows:

> That no qualified homestead entryman who, prior to November 1, 1928, made bona fide entry upon lands of the United States in Moffat, Rio Blanco, and Routt Counties, Colorado, under the provisions of the homestead laws of the United States, and who established residence in good faith upon the lands entered by him, shall be subject to contest for failure to maintain residence or make improvements upon his land subsequent to the incursion of swarms of crickets or grasshoppers upon said land, or in the vicinity; but such entryman shall, within ninety days after issuance of notice by the Secretary of the Interior that the emergency occasioned by such insect invasion has terminated, file in the office of the register of the local land office an affidavit that he has reestablished his residence on the land, with the intention of maintaining the same for a period sufficient to enable him to make final proof: *Provided*, That any entry heretofore canceled within said counties may, subject to intervening adverse rights, be reinstated on a proper showing by the entryman that a leave of absence under this act would have been warranted: *Provided further*, That no such entryman shall be entitled to have counted as a part of the required period of residence any period of time during which he was not actually upon said land prior to the date of the notice aforesaid.

The time that the homesteader is absent under the provisions of this act does not count as constructive residence upon the lands in his entry. In due course the date of termination of the emergency will be fixed and given due publicity at which time each entryman affected should notify the district office of his return to the land in his entry as provided by the act.

All homesteaders absent under the conditions mentioned in the act should keep the district land office advised as to their present address.

You will give all possible publicity to this act without expense to the Government.

Very respectfully,

William Spry, *Commissioner.*

Approved March 22, 1929.

John H. Edwards,
Assistant Secretary.

Circular No. 1195

WITNESSES' JURAT ON FORMS 4-003 AND 4-003a TO BE MODIFIED

Department of the Interior,
General Land Office,
Washington, June 22, 1929.

Registers United States Land Offices:

Gentlemen: My attention has been called to a defect in the witnesses' jurat on Forms 4-003 and 4-003a, applications for original and additional entry under the enlarged homestead laws, in that it does not show that the witnesses were sworn by the official before whom they appeared.

The witnesses as well as the principals must subscribe and be sworn to their affidavits by the officer before whom they are appearing, in connection with all such applications, and therefore it will be necessary to insert the words " and sworn " between the fourth and fifth words of line 5 of the witnesses' jurat on Form 4-003 and on Form 4-003a, until the supply on hand is exhausted.

You will notify all officers in your district qualified to act on such applications to make necessary modifications on said forms.

Very respectfully,

C. C. Moore, *Commissioner.*

Approved June 22, 1929.

John H. Edwards,
Assistant Secretary.

INDIAN ALLOTMENTS AND POSSESSIONS

[See 3 L. D. 371]

LANDS IN THE POSSESSION OF INDIAN OCCUPANTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 23, 1903.

To Registers and Receivers and United States Surveyors General.

GENTLEMEN: Your attention is called to the circular of this department of May 31, 1884, relative to lands occupied by Indian inhabitants (3 L. D. 371), viz:

> DEPARTMENT OF THE INTERIOR,
> GENERAL LAND OFFICE,
> *Washington, D. C., May 31, 1884.*
>
> *Registers and Receivers, United States Land Offices.*
>
> GENTLEMEN: Information having been received from the War Department of attempts of white men to dispossess nonreservation Indians along the Columbia River and other places within the military department of the Columbia of the land they have for years occupied and cultivated, and similar information having been received from other sources in reference to other localities where land is occupied by Indians who are making efforts to support themselves by their own labor, you are hereby instructed to peremptorily refuse all entries and filings attempted to be made by others than the Indian occupants upon lands in the possession of Indians who have made improvements of any value whatever thereon.
>
> In order that the homes and improvements of such Indians may be protected, as intended by these instructions, you are directed to ascertain, by whatever means may be at your command, whether any lands in your districts are occupied by Indian inhabitants, and the locality of their possessions and improvements as near as may be, and to allow no entries or filings upon any such lands. When the fact of Indian occupancy is denied or doubtful, the proper investigation will be ordered prior to the allowance of adverse claims. Where lands are unsurveyed no appropriation will be allowed within the region of Indian settlements until the surveys have been made and the land occupied by Indians ascertained and defined.
>
> Very respectfully,
>
> N. C. MCFARLAND, *Commissioner.*
>
> Approved May 31, 1884.
>
> H. M. TELLER, *Secretary.*

The foregoing instructions apply to every land district and to all lands occupied by Indian inhabitants in any part of the public-land States and Territories of the United States.

It has been officially represented that these instructions are disregarded, and that public-land entries have been allowed upon lands on which Indian inhabitants have their homes and improvements, and in some cases where the Indians have so resided for a number of years, cultivating the soil and making the land their permanent homes.

The allowance of such entries is a violation of the instructions of this department, an act of inhumanity to defenseless people, and provocative of violence and disturbance.

You are enjoined and commanded to strictly obey and follow the instructions of the above circular and to permit no entries upon lands in the possession, occupation, and use of Indian inhabitants, or covered by their homes and improvements, and you will exercise every care and precaution to prevent the inadvertent allowance of any such entries. It is presumed that you know or can ascertain the localities of Indian possession and occupancy in your respective districts, and you will make it your duty to do so and will avail yourselves of all information furnished you by officers of the Indian Service.

Surveyors general will instruct their deputies to carefully and fully note all Indian occupations in their returns of surveys hereafter made or reported, and the same must be expressed upon the plats of survey.

Very respectfully,

W. A. Richards, *Commissioner.*

Department of the Interior,
Office of the Secretary,
December 30, 1903.

Approved.

E. A. Hitchcock, *Secretary.*

[Reported, 38 L. D. 44]

EXCHANGE OF ALLOTMENTS—CEDED LANDS—ACT OF MARCH 3, 1909

Regulations

Department of the Interior,
Office of Indian Affairs,
Washington, D. C., May 28, 1909.

To Agents, Superintendents, and Special Allotting Agent:

The act of March 3, 1909 (35 Stat. 781, 784), reads in part as follows:

> That if any Indian of a tribe whose surplus lands have been or shall be ceded or opened to disposal has received or shall receive an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect.

The following rules governing changes in allotments have been approved by the department:

1. Under this law any Indian of a tribe whose surplus lands have been or shall be ceded or opened to disposal who has received or shall receive an allotment embracing lands unsuitable for allotment purposes will be allowed to relinquish such allotment and select in lieu thereof unappropriated, unoccupied, and unreserved land of equal area and like character, within the ceded part of the reservation on which such Indian belongs, on the same terms and with the same restrictions as the original allotment.

2. Each request for a change shall be made the subject of a separate report, in duplicate, accompanied by the papers and facts on which you base your recommendation for a change of allotment.

3. Departmental regulations of May 3, 1909 (37 L. D. 665), in the form of instructions to the register and receiver of the local land office at Cass Lake, Minn., governing the exchange of Indian allotments on Chippewa lands, under the act of May 23, 1908 (35 Stat. 268), shall apply, wherever practicable, to changes under the provision of the act of March 3, 1909, supra, as to all Chippewa lands.

4. In order that the lieu selections may be promptly noted in the tract books of the local land office, the register of the land office having jurisdiction over the lands selected for allotment must be notified of all selections of lieu allotments on the same day as submitted to the superintendent.

5. Indorse on the trust patent, where such has issued to the allottee, a relinquishment of all the right, title, and interest in and to the allotment described therein, together with a description of the lieu lands wanted.

6. The relinquishment must be signed by the allottee, and acknowledged before you or some other officer authorized to take acknowledgments. All signatures by those who can not write should be by thumb print and witnessed.

7. Where the allottee has died the relinquishment must be signed by the heirs of the decedent and must be accompanied by an affidavit showing specifically that the persons who signed the relinquishment are the lawful heirs. The interests of living minors, whether in their own allotments or those inherited, must be relinquished by their natural guardians, as such.

8. Where the original trust patent has been lost or destroyed the relinquishment and application for reallotment may be submitted in the form of a letter, but the letter must be accompanied by an affidavit showing such loss or destruction of the original trust patent. If no patent has been issued, that fact should be set out in the letter.

The following is the approved form of relinquishment, to be altered to suit the circumstances of each particular case:

STATE OF ——— }
County of ——— } *ss:*

I hereby relinquish all my right, title, and interest in and to the allotment described in the within trust patent, for and in consideration that I be allotted, in lieu thereof, the lands described as follows: ———.

——— ———.

Witness.

——— ———.

Subscribed and sworn to before me this —— day of ———.

——— ———.

While the Indians are entitled to change their allotments under this act, where they have received worthless lands, it should be thoroughly understood that no application should be submitted to the office which is based on other than the most substantial reasons.

Very respectfully,

R. G. VALENTINE,
Acting Commissioner.

Approved May 28, 1909.

FRANK PIERCE,
First Assistant Secretary.

[Reported, 38 L. D. 41]

EXCHANGE OF ALLOTMENTS—CEDED LANDS—ACT OF MARCH 3, 1909

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 14, 1909.[1]

Registers and Receivers, United States Land Offices.

SIRS: It is provided by the act of March 3, 1909 (35 Stat. 781, 784), that:

> If any Indian of a tribe whose surplus lands have been or shall be ceded or opened to disposal has received or shall receive an allotment embracing lands unsuitable for allotment purposes, such allotment may be cancelled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect.

On May 28, 1909, the Secretary of the Interior approved instructions to agents, superintendents, and special allotting agents, prepared by the Commissioner of Indian Affairs, under this act. A copy of the same is inclosed.

Section 4 thereof provides that the officer of the Indian Service having charge of the proposed change in an allotment shall promptly advise the register of the appropriate land office of such proposed change.

You will accordingly, on receipt of such notice, make proper notation thereof on your plats and tract books, in the regular order of its receipt in your office, in relation to other applications for lands, noting the exact time of such filing on said notice, and keep the same and thereafter allow no appropriation of the lands affected, until advised of the final disposition of the application for change.

As this notice is intended merely to serve the purpose of caveat to prevent your subsequent disposition of the lieu land, you will give the same no serial number and make no report to this office thereof.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

Approved June 14, 1909.

R. A. BALLINGER, *Secretary.*

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[1] Amended by Circular No. 455, p. 658. See Circular No. 547, p. 671.

[Reported, 38 L. D. 42]

EXCHANGE OF ALLOTMENTS—CEDED LANDS—ACT OF MARCH 3, 1909

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 14, 1909.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

SIRS: It is provided by the act of March 3, 1909 (35 Stat. 781, 784), that:

> If any Indian of a tribe whose surplus lands have been or shall be ceded or opened to disposal has received or shall receive an allotment embracing lands unsuitable for allotment purposes, such allotment may be canceled and other unappropriated, unoccupied, and unreserved land of equal area, within the ceded portions of the reservation upon which such Indian belongs, allotted to him upon the same terms and with the same restrictions as the original allotment, and lands described in any such canceled allotment shall be disposed of as other ceded lands of such reservation. This provision shall not apply to the lands formerly comprising Indian Territory. The Secretary of the Interior is authorized to prescribe rules and regulations to carry this law into effect.

On May 28, 1909, the Secretary of the Interior approved instructions to agents, superintendents, and special allotting agents, prepared by the Commissioner of Indian Affairs, under this act. A copy of the same is inclosed.

Section 4 thereof provides that the officer of the Indian Service having charge of the proposed change in an allotment shall promptly advise the register of the appropriate land office of such proposed change.

You will accordingly, on receipt of such notice, make proper notation thereof on your plats and tract books in the regular order of its receipt in your office, in relation to other applications for lands, noting the exact time of such filing on said notice, and keep the same until advised of the final disposition of the application for change.

As this notice is intended merely to serve the purpose of a caveat to prevent your subsequent disposition of the lieu land, you will give the same no serial number and make no report to this office thereof.

Section 3 provides that the instructions of May 3, 1909, to the local officers at Cass Lake, governing the exchange of allotments within the Chippewa National Forest (act of May 23, 1908, 35 Stat. 268) shall apply, wherever practicable, to exchanges under the act of March 3, 1909, as to all Chippewa lands. A copy of said instructions is inclosed. (See 37 L. D. 665.)

As the act of May 23, 1908, was designed to encourage Indians having allotments in the national forest to exchange the same for lands in the Chippewa Reservation, outside of such forest, they were allowed to take allotments on the Chippewa Reservation having pine thereon of equal value with that surrendered.

The act of March 3, 1909, provides for the taking of the lieu allotment on the unappropriated, unoccupied, and unreserved land within the ceded portions of the reservation upon which the Indian applying belongs. As this act is of a general nature, applying to all reservations, and as allotments have not been allowed of "pine lands" in the ceded portions of the Chippewa Reservations, appraised for sale at a certain rate, for the benefit of the tribe, the privilege of taking pine lands of equal value with those surrendered is not granted by the act, and so the provisions of section one of the instructions of May 3, 1909, do not apply, except when the allotment desired to be changed is partly within the national forest, in which case the provisions of section one will be extended to all the tracts in the surrendered allotment.

Sections 2 and 3 are applicable and will be followed.

It is intended that applications for changes under this act, with the evidence submitted in support of the same, should be filed with the proper officer of the Indian Service; consequently you will, where such applications are filed in your office, place the proper caveat on your records and forward the papers to such officer.

Fred Dennett, *Commissioner.*

Approved June 14, 1909.

R. A. Ballinger, *Secretary.*

(Inclosures omitted.)

Circular No. 141

INSTRUCTIONS AS TO RELINQUISHMENTS BY INDIANS

Department of the Interior,
General Land Office,
Washington, July 15, 1912.

Registers and Receivers, United States Land Offices.

Sirs: The Commissioner of Indian Affairs in his letter of July 1, 1912, requests that the local officers be instructed to require Indians, in the execution of relinquishments, of allotment applications, or homestead entries under the act of July 4, 1884, to make a statement on the back of the relinquishments submitted of the reasons governing them in making such relinquishments.

The Commissioner of Indian Affairs states that this would, in many cases, eliminate the necessity of obtaining from the officials in the field a special report as to the propriety of accepting the relinquishment.

You will, therefore, in case of a relinquishment, filed by an Indian, of an allotment application, or of a homestead entry, under the act of July 4, 1884, require the party to write at the foot of the regular form provided for relinquishments, or upon the back thereof, a clear statement of his reasons for desiring to make such relinquishment.

Very respectfully,

S. V. Proudfit,
Assistant Commissioner.

CIRCULAR NO. 432

APPLICATIONS FOR LANDS COVERED BY ALLOTMENT APPLICATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 20, 1915.

Registers and Receivers, United States Land Offices.

SIRS: By Circular No. 337, dated July 16, 1914,[a] you were directed to allow no allotment applications under the act of February 8, 1887 (24 Stat. 388), as amended, unless the applicant presented with the same a certificate from the Commissioner of Indian Affairs that the party named therein was entitled to allotment on the public domain.

It is presumed that no such applications have been allowed by you since the receipt of the circular in your office unless accompanied by the required certificate.

When other applications for lands embraced in an Indian allotment application are filed in your office you will reject the same, subject to appeal, if the allotment application was filed subsequent to the receipt of the said circular in your office.

If other applications are filed for lands included in an Indian allotment application which has been suspended by you, in order that opportunity may be afforded the applicant to secure the required certificate from the Indian Office or for other sufficient reason, you will suspend such other applications, noting on each the exact time and sequence of filing, and if the allotment application is finally rejected you will allow the suspended application first filed to which no other objection is found. If the allotment application is ultimately allowed you will reject, subject to appeal, all suspended applications for the land embraced in the same.

Where other applications are filed for lands embraced in an allotment application filed before you received the said circular of July 16, 1914, you will inquire of this office, if notice has not been received, whether the Commissioner of Indian Affairs has certified to the right of the applicant to receive an allotment from the public domain. If reply is received that such certification has been made, you will reject the other applications so filed, with right of appeal; but if informed that the Indian Office has found adversely to the Indian applicant, or that no report has been made, you will suspend such applications, noting on each the order of filing, as directed above, awaiting final determination of the Indian's right.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

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[a] Circular No. 337, dated July 16, 1914, has been superseded by circular of Feb. 1, 1928, p. 658.

[See 44 L. D. 505]

Circular No. 455

AMENDMENT OF CIRCULAR—CHANGES IN ALLOTMENTS

Department of the Interior,
General Land Office,
January 17, 1916.

Registers and Receivers, United States Land Offices.

Sirs: Under date of December 27, 1915, the department approved an amendment to the last paragraph of instructions of June 14, 1909 (38 L. D. 41), relative to the exchange of allotments. As amended, this paragraph reads as follows:

> As this notice is intended merely to serve the purpose of a caveat to prevent the subsequent disposition of the lieu lands, you will give the same no serial number but will report to this office by special letter the contents of said notice.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 52 L. D. 383]

REGULATIONS GOVERNING INDIAN ALLOTMENTS ON THE PUBLIC DOMAIN UNDER SECTION 4 OF THE ACT OF FEBRUARY 8, 1887 (24 STAT. 388), AS AMENDED BY THE ACT OF FEBRUARY 28, 1891 (26 STAT. 794), AND AS FURTHER AMENDED BY THE ACT OF JUNE 25, 1910 (36 STAT. 855)

(Approved April 15, 1918. Revised February 1, 1928)

Department of the Interior,
Washington, February 1, 1928.

The fourth section of the general allotment act of February 8, 1887 (24 Stat. 388), amended by the act of February 28, 1891 (26 Stat. 794), was further amended by section 17 of the act of June 25, 1910 (36 Stat. 855, 859), to read as follows:

> That where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and such allotments to Indians on the public domain as herein provided shall be made in such areas as the President may deem proper, not to exceed, however, forty acres of irrigable land or eighty acres of nonirrigable agricultural land or one hundred and sixty acres of nonirrigable grazing land to any one Indian; and when such settlement is made upon unsurveyed lands the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto, and patent shall be issued to them for such lands in the manner and with the restrictions provided in the act of which this is amendatory. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

CERTIFICATES

Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate in accordance with regulations approved September 23, 1913, showing that he or she is an Indian and entitled to such allotment, which certificate must be attached to the allotment application, blanks for which will be furnished. Application for the certificate must be made on a regular form, blanks for which will also be furnished, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office.

TRIBAL MEMBERSHIP

An applicant for allotment under the fourth section is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

ALLOTMENT APPLICATIONS

The applicant, upon receipt of the required certificate, will fill out the blank form of allotment application and present the same, properly executed, to the register of the land office for the district in which the land is situated. The affidavits attached to the applications for certificate and allotment may be executed before the register or the acting register of the district land office, or any inspector or agent of the Indian Service, or a United States commissioner, or a notary public, or before a judge or clerk or prothonotary of a court or record, or the deputy of such clerk or prothonotary, or before a magistrate authorized by the laws of the State, district, or Territory of the United States to administer oaths, in the county, parish, or land district in which the land lies, or before any officer of the classes mentioned who resides nearer or more accessible to the land, although he may reside outside of the county and land district in which the land is situated.

United States commissioners and notaries public must attach their seal, and justices of the peace must attach to each application at least one certificate by the clerk of the proper court that they are duly authorized to administer oaths.

In case an allotment application is presented without the required certificate, the register will suspend the same for a period of 90 days from notice to enable the applicant to obtain and file such certificate, and that officer will advise the applicant and the Commissioner of Indian Affairs by duplicate notice that unless such certificate is furnished within that time the allotment application will be finally rejected; unless prior to the expiration of the 90-day period the Commissioner of Indian Affairs shall ask for additional time within which to determine the applicant's Indian status.

The filing of an application for allotment on public lands does not secure to an Indian a vested right.

DUTY OF OFFICERS TO ASSIST APPLICANTS

The district land officers, the Indian school superintendents, or other field officers of the Indian Bureau, will afford every facility to Indians desiring to take fourth-section allotments, and will assist them whenever practicable, by advice or otherwise, in the proper steps to be taken, as well as assist them in the preparation of their applications and the required proofs.

Forest rangers and supervisors, and district foresters, will perform similar services, where the allotment applications are made under section 31, act of June 25, 1910 (36 Stat. 855, 863).

Blank forms for application may be had from the Office of Indian Affairs, and district land office, or district forester's office.

HEIRS OF INDIAN SETTLERS AND APPLICANTS

Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

CERTIFICATE OF ALLOTMENT AND FIELD EXAMINATION

When the register accepts an application under the fourth section he will issue to the applicant a "certificate of allotment," on a prescribed form, showing the name in full of the applicant, post-office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land applied for.

A copy of the "certificate of allotment" will be mailed by the register to the Commissioner of Indian Affairs and a copy to the division inspector.

If the division inspector deems it necessary, he will make an investigation, and will report as to the character of the land applied for, whether irrigable, nonirrigable agricultural, or nonirrigable grazing, and as to timber, mineral, coal, phosphate, oil, power site, reservoir, and watering place possibilities; also as to the proper marking of the claim, if unsurveyed.

Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section. In case the division inspector has no information in his office showing the necessity of an examination or investigation in the field, he will report the fact promptly to the district land officer.

SETTLEMENT

The nature, character, and extent of the settlement, as well as the manner in which performed, must be fully set forth in the allotment application. In examining the acts of settlement and determining the intention and good faith of an Indian applicant, due and reasonable consideration should be given to the habits, customs, and nomadic instincts of the race, as well as to the character of the land taken in allotment.

While the act contains no specific requirements as to what shall constitute settlement, it is evident that the Indian must definitely assert a claim to the land based upon the reasonable use or occupation thereof consistent with his mode of life and the character of the land and climate.

To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of two years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence, either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued, will run from the date of suspension. Each case will be determined and adjudicated upon its own facts and merits.

In the matter of fourth-section applications filed prior to these regulations, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by these regulations, such applications will not be immediately rejected, but the applicant will be informed that two years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

CHARACTER OF LAND AND AREA SUBJECT TO ALLOTMENT

The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

Where an Indian makes settlement in good faith upon lands not reserved therefrom, an allotment therefor can not be denied on the ground that the lands are too poor in quality. Also, where settlement was made in good faith, the presence of valuable timber does not warrant the rejection of the allotment.

An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

For regulations governing coal laws, see General Land Office Circular No. 557. For regulations governing oil and gas and other minerals, see General Land Office Circular No. 672.

SEGREGATIVE EFFECT OF APPLICATION

An allotment application under the fourth section filed prior to the regulations of September 23, 1913, does not, in the absence of a certificate from the Indian Office showing that the applicant is an Indian entitled to allotment, segregate the land, and subsequent applications for the same land may be received and suspended to await final action on the allotment application.

Where an allotment application under the fourth section, filed subsequent to the regulations of September 23, 1913, is not accompanied by the requisite certificate from the Indian Office showing the applicant to be entitled to allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

Where an allotment application under the fourth section, accompanied by a certificate from the Indian Office showing that the applicant is an Indian and entitled to allotment, as required by the regulations of September 23, 1913, is found to be in all respects complete and is accepted by the district land officer, it operates as a segregation of the land, and subsequent applications for the same land will be rejected.

APPLICATION FOR UNSURVEYED LANDS

An allotment application under the fourth section for unsurveyed lands must conform to the following rules along the lines of those found in departmental circular of November 3, 1909. (38 L. D. 287.)

It must contain a description of the land by metes and bounds, with courses, distances, and references to monuments by which the location of the tract on the ground can be readily and accurately ascertained. The monuments may be of iron or stone, or of substantial posts well planted in the ground, or of trees or natural objects of a permanent nature, and all monuments shall be surrounded with mounds of stone, or earth when stones are not accessible, and must be plainly marked to indicate with certainty the claim to the tract located. The land must be taken in rectangular form, if practicable, and the lines thereof follow the cardinal points of the compass, unless one or more of the boundaries be a stream or other fixed object. In the latter event only the approximate course and distance along such stream or objects need be given, but the other boundaries must be definitely stated; and the designation of narrow strips of land along streams, watercourses, or other natural objects will not be permitted.

An allotment to a minor child need not be contiguous to that made by the head of a family; but it is required that each allotment made to an individual, whether the head of a family, a single adult, or a minor child, when such allotment embraces more than one legal subdivision, must be composed of contiguous tracts, as in ordinary disposition of the public domain under a settlement law. An additional allotment must be governed by the same rule.

The approximate description of the land, by section, township, and range, as it will appear when surveyed must be furnished, or if this can not be done, an affidavit must be filed setting forth a valid reason therefor.

The address of the claimant must be given, and it shall be the duty of the register, upon the filing of the township plat in the district land office, to notify him thereof, by registered letter, at such address, and to require the adjustment of the claim to the public survey within 90 days. In default of action by the party notified, the register will promptly adjust the claim to the public land survey, if possible, and report his action to the General Land Office.

Notice of the application describing the land as above directed must be posted in a conspicuous place upon the land, and a copy of such notice and proof of posting thereof filed with the application.

MINORS

An Indian settler on public lands under the fourth section is also entitled upon application to have allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationships referred to exist at such date. The law only permits one entitled himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not entitled to allotments on the public domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

INDIAN WIVES

Where an Indian woman is married to a white man or other person not entitled to an allotment under the fourth section, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such woman and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise entitled, and also for her minor children where her husband is for any reason disqualified.

An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

CHARGES AND PROTESTS AGAINST INDIAN ALLOTMENTS

The act of April 23, 1904 (33 Stat. 297), limits the jurisdiction of the Secretary of the Interior to cancel first or trust patents issued on Indian allotments to specific instances, without authority from Congress. In view of the fact that information respecting the classes defined in said act is obtainable from the department's records, no charges preferred as to those classes will be entertained. Third parties are never invited to attack Indian allotments with the hope or expectation of securing any advantage by reason of such attack. Such parties must assume and pay the expense of a hearing, but at the same time they acquire no preference right to enter the land in the event of the cancellation of the allotment, and this whether first or trust patent has issued or not. Section 2 of the act of May 14, 1880 (21 Stat. 140), does not apply to proceedings of this character.

However, where a party claims equitable rights to lands covered by an Indian allotment for which trust patent has been issued, on account of prior settlement and improvements, a hearing may be ordered on direction of the department with the view of recommending to Congress that such patent be canceled, if the showing made at the hearing justifies such action. In this class of cases, and in cases of charges preferred against allotments on which trust patents have not issued, the following rules will be observed:

The charges must be filed in the proper district land office in the form of a duly corroborated affidavit, clearly setting forth the specific grounds for such charges. The register will forward the papers to the General Land Office, which will give the Indian Office full information thereof.

Where it is charged that the lands applied for are not of the character subject to allotment, that the required settlement has not been made, that the contestant has a prior and better claim, and that the applicant for allotment is not seeking to obtain the land in good faith but is acting in the interest of another person not entitled thereto, the General Land Office will cause a preliminary investigation to be made by an inspector in the field as to the truth and merits of the charges, if such action is deemed necessary. The charges will be dismissed unless they appear to be probably true.

If sufficient showing is made, a hearing will be had before the proper district land officer after due notice to all parties. The taking of testimony and other proceedings in such hearings will be in accordance with the rules of practice governing proceedings before the district land officer.

Nothing in the foregoing will prevent the department from accepting an Indian's relinquishment of an unpatented allotment and directing its cancellation if, after the charges are filed, it is shown that the allotment ought to be canceled.

Third parties are not privileged to intervene in proceedings to determine whether lands applied for are of the character subject to allotment or as to the right of the Indian to an allotment as this is a matter resting solely in the judgment of the department.

ALLOTMENTS WITHIN NATIONAL FORESTS

By the terms of section 31 of the act of June 25, 1910 (36 Stat. 855, 863), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests. See Appendix No. 3 for copy of the act.

An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and forester to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

The application must be filed with the register, district land office in which the land applied for is located. The register will record the application in the books in that office and will certify whether there is any prior valid claim against the land. He will then forward the case to the General Land Office, where it will be properly noted and if found satisfactory it will then be transmitted to the Office of Indian Affairs for consideration and submission to the Secretary of the Interior. If the Secretary approves the application, he will transmit it to the General Land Office for issuance of a trust patent.

The provisions of said section are not limited to Indians occupying, living on, or having improvements on lands within a national forest at the date of the passage of the act, but apply also to Indians whose settlement, occupation, or improvements occurred subsequent to the passage of the act.

The listing and opening to entry of lands under the provisions of the forest homestead act of June 11, 1906 (34 Stat. 233), do not preclude their being taken as an allotment under section 31.

An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals.

The rules given in this circular for the conduct of fourth-section applications apply equally to applications under said section 31.

SALE, HEIRSHIP, WILLS, ETC.

The existing laws and regulations relating to the sale of allotted Indian lands, the determination of heirs, the issuance of patents in fee, the disposal of trust allotments by will, and the extension of the trust period, applicable to reservation allotments under the provisions of the act of February 8, 1887, as amended, are equally applicable to allotments made under the fourth section of said act.

ALLOTMENTS—RESERVATION

No general regulations governing the class and area of land to be given allottees on all reservations can be promulgated, as this is controlled in part by special acts of Congress applying to particular reservations. Special instructions applicable to particular reservations, are, at times, issued under the act of February 8, 1887 (24 Stat. 388), for allotments on reservations, for the allotment of which no special act has been provided.

RELINQUISHMENTS

Relinquishments of Indian allotments, if filed in a district land office, will not be noted on the records of that office, but will be forwarded to the General Land Office without action, and will be transmitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for consideration and recommendation. Where the application has not been approved, the Commissioner of Indian Affairs has authority to accept or reject the relinquishment, as he may deem proper. Where the allotment application has been approved, departmental approval of the recommendation of the Commissioner of Indian Affairs must be had before the relinquishment can be accepted. On the acceptance of a relinquishment, the General Land Office will be notified of the fact. The land affected will not become subject to entry until after the district land officer has noted the fact of the relinquishment and cancellation on his records.

NOTICE OF ACTION

Notice to Indian allottees, or to their parents, of minors, of any action adverse to their interests must be given by registered letter to the proper Indian superintendent, as well as to the party in interest.

Registers will keep informed of the names and addresses of the Indian superintendents charged with the interests of the Indians in their districts, but if no such officer is known to them, notice will be sent to the Commissioner of Indian Affairs of this city, by the registers.

CITIZENSHIP

Under section 6 of the act of February 8, 1887 (24 Stat. 388), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

The act of May 8, 1906 (34 Stat. 182), section 6, changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

The act of June 2, 1924 (43 Stat. 253), conferred citizenship on all noncitizen Indians born within the territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land if qualified. (51 L. D. 379.)

INDIAN HOMESTEADS

These regulations do not apply to homestead entries by Indians under either the act of March 3, 1875 (18 Stat. 420), or July 4, 1884 (23 Stat. 96), as the rules and regulations governing regular citizen homestead entries are applicable to this class of entries by Indians. The act of July 4, 1884, expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the citizen homestead patent is issued on entries made under either of said acts. The acts in question are printed in the appendix to these regulations as matter of information.

INDIAN OCCUPANCY

Registers will ascertain by any means in their power whether any public lands in their districts are occupied by Indians and the location of their improvements, and will suspend and transmit to the General Land Office all applications made by others than the Indian occupants, upon lands in the possession of Indians who have made improvements of any value whatever thereon.

ALLOTMENTS IN ALASKA

The rules and regulations relating to allotments in Alaska are given in the general instructions relating to the acquisition of title to public lands in the Territory of Alaska, Circular 491.

Thos. C. Havell,
Acting Commissioner, General Land Office.
Chas. H. Burke,
Commissioner of Indian Affairs.

Approved February 1, 1928.

E. C. Finney, *First Assistant Secretary.*

(Appendix containing acts and forms omitted.)

The listing and opening to entry of lands under the provisions of the [illegible] clude their being taken as an allotment under section 31.

An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. [illegible] applications [illegible] under said section 31.

[illegible]

The existing laws and regulations re[illegible] visions of the act of February 8, 1887, as amended, are equally ap[illegible]

[illegible]

No general regulations governing the [illegible] given allottees on all reservations can be promulgated, as this is controlled in part by special [illegible] applying to particular reservations. Special instructions applicable to particular reserva- [illegible]

[illegible] mitted by the Commissioner of the General Land Office [illegible] missioner of Indian Affairs for consideration and recommendation. Where the application has not been approved, the Commissioner of [illegible] General Land Office will [illegible] will not become subject to entry until after the district land officer has noted the fact of the reli[illegible]ation on his records.

Notice to [illegible] action adverse to their interests must be given by registered letter to the [illegible] as well as to the party in interest. [illegible]

Registers will keep informed of the names and addresses of the Indian superintendents charged with the interests of the Indians in [illegible]

INDIAN LANDS[1]

REGULATIONS GOVERNING USE OF VACANT CEDED INDIAN LANDS

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 25, 1912.

To Officers in Charge of Indian Reservations and Registers and Receivers of United States Land Offices.

GENTLEMEN: Regarding the question of jurisdiction over Indian lands after they have been opened for settlement and entry, under date of November 27, 1911, the First Assistant Secretary of the Interior addressed the Commissioner of Indian Affairs as follows:

JURISDICTION OVER RELINQUISHED INDIAN LANDS

NOVEMBER 27, 1911.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: You have submitted the question of jurisdiction over lands within Indian reservations after they have been opened to settlement and entry.

The question is perhaps not one so much of jurisdiction as one involving the rights of the Indians to the use and benefit of the lands after provision has been made extinguishing the Indian claim and making disposition of the lands. You note that such lands may be divided generally into two classes: (1) Those which the United States has purchased from the Indians and paid for, the Indian claim thereto being thus completely extinguished; and (2) those which the United States agrees to dispose of for the benefit of the Indians, without, however, becoming bound to purchase the lands, whereby the claim of the Indians remains unextinguished until the lands are finally sold.

The department agrees with you that as to the first class the Indians have no further concern and that after the cession such lands are properly under the jurisdiction of the General Land Office.

The department also agrees with you that the Indians are rightfully entitled to the use and benefit of the lands coming within the second class until they shall have been finally disposed of, with the condition, however, that the use thereof shall in nowise interfere with the speedy sale or other disposition provided by law. There should be no difficulty in properly handling such cases through joint cooperation between your office and the General Land Office. There can be no objection to permitting the use of such lands by the Indians or for grazing purposes for the benefit of the Indians, provided always that such use is so controlled as to not interfere with the settlement or sale of the lands. You will in all such cases confer with the General Land Office, with a view of adopting such rules and regulations as may be necessary to secure to the Indians any income that may be properly derived from the lands and at the same time to secure their early sale or settlement, as the law may direct.

In respect to the Round Valley Indian Reservation in California, specifically referred to by you, the act of October 1, 1890 (26 Stat. 658), provides for the survey and allotment of the agricultural lands to the Indians in severalty, for the reservation of a reasonable amount of grazing and timber lands, and for the survey of the remainder of grazing and timber lands into tracts of 640 acres, and the sale of the same, the proceeds thereof, after paying the expenses, to be placed in the Treasury of the United States to the credit of the Indians.

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[1] There have been printed under this title the regulations of the greatest importance at the present time relating to lands in former Indian reservations.

The act of February 8, 1905 (33 Stat. 706), directed that all the lands relinquished from the Round Valley Indian Reservation under the act of October 1, 1890, supra, should be surveyed, reappraised, and thereafter be subject to settlement and entry under the provisions of the homestead laws of the United States, and that all the lands thus opened to settlement remaining undisposed of at the expiration of five years from the taking effect of the act might be sold and disposed of for cash, the proceeds to be disposed of as provided in the act of 1890.

Under these provisions of law this reservation clearly falls within the second class, and the Indians are entitled to possession of the lands until the same shall have been settled upon, entered, or sold. You will immediately confer with the General Land Office, with a view to entering into an arrangement along the lines suggested herein.

A copy of this letter will be sent to the Commissioner of the General Land Office for his information and guidance.

Very respectfully,

SAMUEL ADAMS, *First Assistant Secretary.*

To put into effect the foregoing rulings of the department and to provide for concurrent supervision over the lands involved, wherever situated, for the protection and benefit of the Indian owners and protection of prospective settlers, the following instructions are issued:

1. Up to date of entry, sale, or settlement, the lands in class 2 shall be under the jurisdiction of the Bureau of Indian Affairs and under the immediate supervision of the officer in charge of the Indian reservation where the lands are situate.

2. The officer in charge of the Indian reservation will prepare permits for grazing purposes in favor of responsible persons on the form approved by the department September 1, 1911 (5–175a), to which shall be added the following:

> It is understood and agreed by the permittee that he will place no improvements upon the lands covered by this permit without first securing the written consent of the officer in charge of the reservation, and all fences and other improvements which he shall place upon the lands shall remain thereon at the expiration of the permit and become the absolute property of the equitable owner of the soil.
>
> It is also understood and agreed by the permittee that from and after the date of any bona fide settlement, sale, or entry of the lands covered by this permit, or any part thereof, this permit becomes void as to the lands so affected, and the permittee agrees and hereby stipulates that he will not interfere with or in any manner attempt to prevent any person from making settlement, filing, or entry upon any of the lands included in this permit.
>
> The penalty for violating the foregoing conditions and stipulations will be the summary revocation of the permit.

3. No permit shall be issued for a longer period than one year, and all permits shall be subject to the approval of the Secretary of the Interior.

4. Before executing a permit in favor of any person the officer in charge of the reservation will first ascertain from the land office of the district in which the lands are situated if said lands are applied for or are included in any entry of record. And thereafter, upon the execution of a permit, he will furnish the said land office with a description of the lands, the name of the permittee, and length of term, the same to be posted in the land office for the information of the public.

Any and all permits executed under these instructions shall be subject and subordinate to any valid settlement made or maintained under the public-land laws.

5. The officer in charge of the reservation is charged with the duty of preventing all trespassing on lands in class 2, the collection of trespass fees, and the prosecution of trespassers as provided by law.

6. After date of entry, sale, or settlement the lands in class 2 shall be under the jurisdiction of the General Land Office, and any permit in effect at such date shall cease and determine, and if occupied by any Indian such Indian's right of occupancy shall cease.

7. It shall be the duty of the local land officers to furnish the officer in charge of all Indian reservations within their jurisdiction monthly lists of all applications for entry or purchase, as well as all relinquishments filed, embracing lands in class 2, and to furnish also information when requested as to particularly described tracts.

Approved.

F. H. Abbott,
Assistant Commissioner of Indian Affairs.

Approved July 25, 1912.

S. V. Proudfit,
Assistant Commissioner of the General Land Office.

Approved July 25, 1912.

Samuel Adams,
First Assistant Secretary.

[Reported, 46 L. D. 79]

Circular No. 547

DISPOSITION OF SURPLUS COAL LANDS RESTORED FROM INDIAN RESERVATIONS

Department of the Interior,
General Land Office,
Washington, April 16, 1917.

Registers and Receivers, United States Land Offices.

Sirs: Attention is directed to the act of Congress approved February 27, 1917 (39 Stat. 944), entitled "An act to authorize agricultural entries on surplus coal lands in Indian reservations," copy of which is appended hereto.

With the exception of the lands of the Five Civilized Tribes, the act applies to all Indian reservations that have been or which may be hereafter restored where the surplus lands are or may be divided into mineral and nonmineral classes.

It recognizes that such surplus coal lands have two distinct values, coal and nonmineral or agricultural. It provides for the disposition of the two estates therein created, the coal deposits and the nonmineral, and directs that the proceeds derived from both be placed to the credit of the Indians in the manner provided for other surplus lands. But while the estates may be so separated, no sale of the coal deposits only may be made in advance of the disposition of the nonmineral estate. It does not extend the coal-land laws to areas not otherwise subject thereto, except to permit of the purchase of the coal deposits where the lands have been disposed of under the act with a reservation of such deposits, and then only where the coal-land laws shall have been extended to such areas at the time of such coal purchase. It does not repeal or modify the coal-land laws where otherwise applicable, nor prevent the acquisition of both estates thereunder, but in providing for the disposition of the two estates and in directing the payment to the Indians of the proceeds arising from each, it necessarily contemplates that if the coal-land purchaser precede the agricultural applicant and thus secure title to both estates, he must pay for each at the prices fixed for the respective estates.

Where the law providing for the separation of the lands into mineral and nonmineral classes placed a flat price on the nonmineral lands or authorized the disposal of such lands at a general price which has been so fixed, this act does not require a specific tract appraisal of the coal lands to be disposed of thereunder with a reservation of the coal deposits and in all such cases the nonmineral or agricultural estate may be disposed of at the prices so fixed for the nonmineral lands. Where the law requires that the nonmineral lands shall be separated into further classes and appraised either by tracts or by such groups, no disposition of the coal lands in such reservation may be made either under this act or under the coal-land laws until such surplus lands have been separated into classes and appraised as to their value exclusive of the coal deposits in the manner provided for nonmineral lands, and in such cases the act has the effect of withdrawing from entry under the coal-land laws the coal lands in such reservations until such coal lands shall have been appraised without reference to the coal deposits in the manner provided for the nonmineral lands.

If the nonmineral lands and the coal lands with the reservation of the coal deposits be withdrawn from other disposition for the purpose of sale, no entry under the coal-land laws may be allowed therefor until such lands shall have been sold with the reservation of such deposits or restored. The coal deposits in lands sold or otherwise disposed of with a reservation of the coal, if otherwise subject to disposition, may be purchased under the coal-land laws at prices fixed thereunder, and if any of the coal lands so withdrawn for sale shall be restored unsold, both estates may be purchased under the coal-land laws upon the payment of the nonmineral and coal prices.

If, under the law authorizing the disposal of the nonmineral lands, a proclamation of the President or order of the Secretary is required before the restoration can take effect, the coal lands with the reservation of the coal deposits will not become subject to disposal under the provisions of this act until so restored.

Very respectfully,

C. M. Bruce,
Acting Commissioner.

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

(Act omitted.)

[Reported, 41 L. D. 12]

CIRCULAR No. 106 [2]

CHEYENNE RIVER AND STANDING ROCK INDIAN LANDS—TIME OF PAYMENTS EXTENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 4, 1912.

Registers and Receivers, United States Land Offices, Lemmon and Timber Lake, S. Dak.

SIRS: Your attention is directed to the act of Congress approved April 13, 1912 (37 Stat. 84), which reads as follows:

> That any person who has heretofore made a homestead entry for land which was formerly a part of the Cheyenne River Indian Reservation, in the State of South Dakota, or the Standing Rock Indian Reservation, in the States of South Dakota and North Dakota, authorized by the act approved May twenty-ninth, nineteen hundred and eight, may apply to the register and receiver of the land office in the district or districts in which the land is located for an extension of time in which to make payment of any amount that is about to become due, and upon the payment of interest for one year in advance, at five per centum per annum upon the amount due, such payment will be extended for a period of one year, and any payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided,* That the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due by the terms of the act under which the entry was made; that all moneys paid for interest as herein provided shall be deposited in the Treasury to the credit of the Indians as a part of the proceeds received for the land: *And provided further,* That any entryman who has resided upon and cultivated the land embraced in his entry for the period of time required by law in order to make commutation proof, may make proof, and if the same is approved, further residence and cultivation will not be required: *Provided,* That any and all payments must be made when due unless the entryman applies for an extension and pays interest at five per centum per annum in advance upon the amount due as herein provided, and patent shall be withheld until full and final payment of the purchase price is made in accordance with the provisions hereof.
>
> That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended as herein provided, will forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.
>
> That nothing herein contained shall affect any valid adverse claim initiated prior to the passage of this act.

No special form of application for extension of time to make payment will be required. The payment by the entryman of interest for one year in advance on any amount about to become due at the rate of 5 per cent per annum will be sufficient, and the receiver will note upon receipts and abstracts of collections the nature and purpose of the payment.

Under the second proviso of the act, any entryman who has resided upon and cultivated the land embraced in his entry for the period of time required by law in order to make commutation proof, may make proof, and if the same is approved, further residence and cultivation will not be required, and the entryman may complete his payments in the annual installments, and subject to the same conditions as to extensions of time as though such proof had not been made. If such proof is found satisfactory by you, you will so notify the entryman, and that your approval thereof is subject to review by this office; the register will not issue final certificate, but forward the proof to this office with the returns for the current month, attaching thereto a brief report as to its status. Upon final payment being made final certificate may issue, in the absence of other objection, without instructions from this office.

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[2] See also act of May 28, 1914 (38 Stat. 383).

Very respectfully,

Fred Dennett, *Commissioner*.

Approved.

Samuel Adams,
First Assistant Secretary.

WITHDRAWAL OF CHEYENNE RIVER AND STANDING ROCK INDIAN LANDS

Department of the Interior,
General Land Office,
Washington, May 23, 1919.

Registers and Receivers, Lemmon and Timber Lake, S. Dak.

Sirs: The act of Congress approved May 29, 1908 (35 Stat. 460), providing for the disposal of a portion of the surplus and unallotted lands in the former Cheyenne River and Standing Rock Indian Reservations, North and South Dakota, provides in section 4:

> That all lands remaining undisposed of at the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of Interior, be reappraised in the manner provided for in this Act. And it is further provided that any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this Act, under such rules and regulations as the Secretary of the Interior may prescribe.

In order that the necessary preparations may be made so that the remaining lands may be offered for sale at such time as may hereafter be determined, it is directed that, except as hereinafter provided, all of such lands be withdrawn from settlement, entry, or other disposition, under the public land laws on and after May 27, 1919. The offering, when held, will include all lands not otherwise withdrawn or reserved and free from adverse claim at the date of sale, which had been opened to homestead entry seven years prior to May 27, 1919.

This withdrawal will not prevent the allowance of entries on or after May 27, 1919, under the said act of May 29, 1908 (35 Stat. 460), in the following cases:

(1) Lands not opened to entry seven years prior to May 27, 1919, will continue subject to disposal until otherwise directed.

(2) Lands which on May 26, 1919, are embraced in existing entries may be reentered if such existing entries are thereafter canceled on contest, relinquished or otherwise.

(3) Any application to enter these lands or any application for amendment presented prior to May 27, 1919, may, if sufficient, be allowed on or after that date.

(4) A settler on the land on May 26, 1919, may make entry after that date provided he does so within the three months allowed for that purpose.

(5) Lands which on May 26, 1919, are embraced in a prior withdrawal may be entered after that date if such withdrawal is revoked.

* * * * * * *

Very respectfully,

Clay Tallman, *Commissioner.*

Approved May 23, 1919.

Alexander Vogelsang,
First Assistant Secretary.

[Reported, 48 L. D. 80]

Circular No. 751

INSTRUCTIONS RELATIVE TO EXTENSIONS OF TIME FOR PAYMENTS FOR LANDS IN PART OF STANDING ROCK INDIAN RESERVATION, NORTH AND SOUTH DAKOTA, ENTERED UNDER THE HOMESTEAD LAW AND THE ACT OF FEBRUARY 14, 1913 (37 STAT. 675), AND FOR LANDS IN PART OF CHEYENNE RIVER AND STANDING ROCK INDIAN RESERVATIONS, NORTH AND SOUTH DAKOTA, SOLD AT PUBLIC SALE UNDER ACT OF MAY 29, 1908 (35 STAT. 460)

Department of the Interior,
General Land Office,
Washington, April 20, 1921.

Registers and Receivers, Timber Lake and Lemmon, S. Dak., and Bismarck, N. Dak.

Sirs: The act of March 4, 1921 (41 Stat. 1446), provides:

> That the Secretary of the Interior is hereby authorized, in his discretion, to extend for a period of one year the time for the payment of any annual installment due, or hereafter to become due, of the purchase price for lands sold under the act of Congress approved February 14, 1913 (Thirty-seventh Statutes, page 675), entitled "An act to authorize the sale and disposition of surplus or unallotted lands of the Standing Rock Indian Reservation in the States of North and South Dakota, and for other purposes," and any payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided,* That the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due by the terms of the act under which the entry was made: *Provided further,* That any and all payments must be made when due unless the entryman applies for an extension and pays interest for one year in advance at 5 per centum per annum upon the amount due, as herein provided, and patent shall be withheld until full and final payment of the purchase price is made in accordance with the provisions hereof: *And provided further,* That any entryman who has resided upon and cultivated the land embraced in his entry for the period of time required by law in order to make commutation proof may make proof, and if the same is approved further residence and cultivation will not be required: *And provided further,* That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended, as herein provided, shall forfeit the entry and the same shall be canceled and any and all payments theretofore made shall be forfeited.
>
> Sec. 2. That the Secretary of the Interior is also hereby authorized, in his discretion, to extend for a period of one year, the time for the payment of any annual installment hereafter to become due of the purchase price of lands in the Cheyenne River Indian Reservation in South Dakota and the Standing

Rock Indian Reservation in the States of North Dakota and South Dakota, sold at public sale under the act of Congress approved May 29, 1908 (Thirty-fifth Statutes, page 460), under the same terms and on the same conditions as provided in section 1 of this act.

(1) *Lands involved and entries and sales affected.*—Section 1 of the said act of March 4, 1921, applies to homestead entries made either before or after the passage of the act in the part of the Standing Rock Indian Reservation, North and South Dakota, opened under the act of Congress approved February 14, 1913 (37 Stat. 675). Section 2 of the said act of March 4, 1921, applies to sales made either before or after the passage of the act in the part of the Cheyenne River and Standing Rock Indian Reservations, North and South Dakota, opened under the act of May 29, 1908 (35 Stat. 460).

(2) *Granting of extensions of time for payments.*—The right to grant extensions of time for payments is made discretionary with the Secretary of the Interior. Extensions will be granted in all cases where applied for, provided interest is paid in advance at the rate of 5 per cent per annum on the amounts involved, as required by the said act of March 4, 1921.

(3) *Original requirements in the matter of payments in connection with homestead entries.*—The terms of payment prescribed by the act of February 14, 1913, above cited, in connection with homestead entries of Standing Rock lands made thereunder, are as follows:

> One-fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal installments, the first within 2 years and the remainder annually in 3, 4, 5, and 6 years, respectively, from and after the date of entry.

(4) *Original requirements in the matter of payments in connection with sales.*—The only sales heretofore authorized under the act of May 29, 1908, above cited, were authorized by departmental regulations of February 27, 1920. The terms of payment prescribed by said regulations for such sales are as follows:

> Purchasers may pay all cash for the lands at the time of purchase or one-third down and the balance in two equal annual installments due 1 and 2 years from the date of purchase, interest to be paid on the deferred installment at the rate of 5 per cent per annum.

(5) The said act of March 4, 1921, modifies the above requirements in these respects:

(*a*) The time for the payment of any annual installment which is due and payable may be extended for a period of one year provided interest at the rate of 5 per cent per annum is paid on the amount in question as a prerequisite to the granting of such extension. Any payment so extended may annually thereafter be extended for a period of one year in the same manner, but the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due by the terms of the act under which the entry was made. The utmost time allowed for the completion of payments under homestead entries made under the said act of February 14, 1913, is seven years from the date of entry. The utmost time allowed for the completion of payments under sales made under the said regulations of February 27, 1920, and the said act of May 29, 1908, is three years from the date of sale.

(*b*) Under the proviso in the said act of March 4, 1921—

> That any entryman who has resided upon and cultivated the land embraced in his entry for the period of time required by law in order to make commutation proof, may make proof, and if the same is approved, further residence and cultivation will not be required—

any entryman may submit commutation proof and thereafter complete the payments of purchase money, the same as may be done where 3-year proof is submitted. This construction of the said proviso is the construction given to a similar proviso found in the act of April 13, 1912 (37 Stat. 84), under which instructions were approved by the department May 4, 1912 (41 L. D. 12).

(6) *Entrymen in default in the matter of payments.*—You will promptly serve notice on each entryman who is in arrears in the matter of payments that he must by June 30, 1921, make payment of sums of principal due, without interest, or he must, by the date stated, obtain an extension of time for the payment of such sums. You will in the notice to each entryman hold his entry for cancellation because of his default in the matter stated, and provide that if payment, either of principal or of interest, is not made by June 30, 1921, you will report his entry to this office for cancellation. The interest required as a prerequisite to the granting of an extension of time for the payment of any installment which is in arrears should be calculated in the following manner: Where the installment is one year or less in arrears, interest must be paid thereon for one year; where the installment is more than one year and two years or less in arrears, interest must be paid thereon for two years; where the installment is more than two years and three years or less in arrears, interest must be paid thereon for three years, etc.

(7) *Payments which hereafter become due.*—Hereafter entrymen must make the required payments at the time such payments become due. If any entryman fails to make any required payment of principal when such payment becomes due, you will, by notice to him, hold his entry for cancellation because of the default and advise him that in the event of his failure to make the payment, or to apply for and secure an extension of time for that purpose by making proper payment of interest within 30 days from receipt of the notice, you will report his entry to this office for cancellation.

(8) *Entrymen entitled to credit for military or naval service.*—The instructions given herein should be read in connection with departmental instructions of June 9, 1919, circular No. 647 (47 L. D. 191), as to installment payments required in connection with homestead entries after a period of military or naval service.

Very respectfully,

William Spry, *Commissioner.*

Approved April 20, 1921.

E. C. Finney,
First Assistant Secretary

[Reported, 52 L. D. 352]

CIRCULAR NO. 1146

PAYMENTS REQUIRED FOR CHEYENNE RIVER AND STANDING ROCK INDIAN LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 23, 1928.

Registers, Pierre, S. Dak., Bismarck, N. Dak.

GENTLEMEN: The act of March 31, 1928 (45 Stat. 400), provides:

> That any homestead entryman or purchaser of Government lands within the former Cheyenne River and Standing Rock Indian Reservations in North Dakota and South Dakota who is unable to make payment of purchase money due under his entry or contract of purchase as required by existing law or regulations, on application duly verified showing that he is unable to make payment as required, shall be granted an extension of time for payment of one-fourth the amount, including principal and interest, due and unpaid on his entry or purchase until the 1st day of December, 1928; the remainder to be paid in three equal annual installments falling due on December 1, 1929, December 1, 1930, and December 1, 1931; all such amounts to bear interest at the rate of 5 per centum per annum until the payment dates: *Provided,* That upon failure to make complete payment of any installment the entry shall be canceled and the money paid forfeited.

1. The act is construed to require the payment of interest on the principal which was due and unpaid on March 31, 1928, at the rate of five per cent per annum from the maturity of the unpaid amounts and for the period of extension and to require the payment of interest on the interest which was due and unpaid on said date at the same rate from the date of the passage of the act and for the period of the extension.

2. Any entryman who is unable to make the payment as required by previous laws and who files a satisfactory corroborated affidavit setting out such inability and the reasons therefor may pay one-fourth of the principal which was due and unpaid on March 31, 1928, on or before December 1, 1928, and have the balance divided into three annual installments falling due on December 1, 1929, December 1, 1930, and December 1, 1931, with interest on each installment as indicated in paragraph 1, hereof.

3. Notices showing the total amount of principal and interest heretofore paid under each entry, together with the amount of principal which was due and unpaid on March 31, 1928, and the amount of interest required will be prepared in this office and sent to you for service by registered letter. A copy of a notice together with a copy of this letter should first be sent to the entryman at his record address and if service is not obtained at that address a further notice should be directed to him at the post office nearest the land. This office will use the utmost care in preparing these notices in order that they may clearly show the amounts due but before final certificate is issued you will check the amounts shown in the notice with your records in order to verify the figures given.

4. The provision in the act that upon the failure of an entryman to complete his payments as required the entry shall be canceled and the money paid forfeited will be strictly observed and entries for

which payments are not made as required will be canceled without notice to the entrymen other than the notice advising them of the amounts due.

5. Upon payment being made you will report to this office and if payment is not made you will so report as soon as possible after December 1, 1928. You will make similar reports immediately after December 1, 1929, December 1, 1930, and December 1, 1931.

6. Where payments are made as required and where satisfactory proof of residence, cultivation, and improvements has been submitted and in the absence of objections shown by your records you will issue final certificate without special instructions from this office.

7. The act is supplemental to the acts of April 13, 1912 (37 Stat. 84), May 28, 1914 (38 Stat. 384), March 4, 1921 (41 Stat. 1446), April 25, 1922 (42 Stat. 499), and March 3, 1925 (43 Stat. 1184). Payments maturing after March 31, 1928, must be paid as indicated in Circulars Nos. 106 and 751.

8. Any entryman may if he so desires file a relinquishment of a portion of his entry and apply to have the money heretofore paid applied on the part retained (46 L. D. 282).

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 23, 1928.

E. C. FINNEY,
First Assistant Secretary.

REAPPRAISEMENT OF CHEYENNE RIVER, STANDING ROCK, COEUR D'ALENE, FLATHEAD, AND SPOKANE INDIAN LANDS[a]

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 11, 1927.

THE SECRETARY OF THE INTERIOR.

SIR:

* * * * * * *

Considering the long period of time that has elapsed since the original appraisements were made and the continued filing of applications for reappraisement, it is the opinion of this office that action should be taken to bring the matter definitey to an end. It is believed that ample authority is vested in the Secretary of the Interior under the act of June 6, 1912, supra, to set a definite date after which no further application for appraisement will be considered. It is therefore recommended that no further applications for reappraisement involving lands of the following Indian reservations opened to entry, be considered unless filed in the local land office on or before September 30, 1927: Cheyenne River Reservation, S. Dak.; Standing Rock Reservation, N. Dak.; Coeur d'Alene Reservation, Idaho; Flathead Reservation, Mont.; Spokane Reservation, Wash.

It is also recommended that in those cases where action has once been taken on an application for reappraisement that no appeal or supplemental application for reappraisement be considered.

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[a] See instructions of Aug. 29, 1927, p. 724.

If these recommendations are approved a copy of this letter will be furnished each of the respective superintendents with instructions to give the matter all possible publicity among the residents of the reservation. A copy will also be furnished the Commissioner of the General Land Office with request that the proper local land office be notified to give the matter publicity through the local press as a matter of news and without expense to the Government.

Very respectfully,

Chas. H. Burke, *Commissioner.*

Approved August 16, 1927.

E. C. Finney,
First Assistant Secretary.

[Reported, 47 L. D. 57]

Circular No. 636½

INSTRUCTIONS—SALE OF CEDED CHIPPEWA ISOLATED TRACTS OF LANDS IN MINNESOTA

Department of the Interior,
General Land Office,
Washington, D. C., March 26, 1919.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

Sirs: Your attention is directed to the act of Congress approved February 4, 1919 (40 Stat. 1055), entitled "An act for the sale of isolated tracts of the public domain in Minnesota." Said act reads as follows:

> That the provisions of section twenty-four hundred and fifty-five of the Revised Statutes of the United States, as amended by the act of March twenty-eighth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page seventy-seven), relating to the sale of isolated tracts of the public domain, be, and the same are hereby, extended and made applicable to ceded Chippewa Indian lands in the State of Minnesota: *Provided*, That the provisions of this act shall not apply to lands which are not subject to homestead entry: *Provided further*, That purchasers of land under this act must pay for the lands not less than the price fixed in the law opening the lands to homestead entry.

The Chippewa lands subject to sale under said act are only those which have been opened to homestead entry. Any application for the sale under said act of Chippewa lands not listed as lands subject to homestead entry in some Chippewa agricultural schedule should be rejected.

Applications to purchase these lands as isolated tracts and sales thereof as such tracts will be governed by the general regulations governing the offering at public sale of public lands under said section 2455, as amended by the said act of March 28, 1912. See instructions of January 11, 1915 [b] (43 L. D. 485, Circular No. 371). However, purchasers of land subject to sale under said act must pay for the lands not less than the price fixed in the law opening the lands to homestead entry.

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[b] The instructions of January 11, 1915 (Circular No. 371), have been superseded by Circular of April 7, 1928 (No. 684), p. 742.

In referring applications for the sale of any tract under the isolated tract law to the Chief of Field Service, this office, for report as to the value of the land and any objection he may wish to interpose to the sale, you will accompany the application with a statement showing the date when and the price at which the land was opened to entry.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 51 L. D. 388]

CIRCULAR No. 1052[3]

RULES AND REGULATIONS FOR THE SALE AND REMOVAL OF PINE TIMBER ON CHIPPEWA INDIAN LANDS, MINNESOTA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 27, 1926.

1. The merchantable pine timber on the lands described in the accompanying descriptive lists of ceded Chippewa lands in the State of Minnesota will be offered for sale, under sealed bids, under the fifth section of the act of January 14, 1889 (25 Stat. L. 642), as amended and modified by the acts of June 27, 1902 (32 Stat. L. 400), May 23, 1908 (35 Stat. L. 268), and section 27 of the act of June 25, 1910 (36 Stat. L. 862). Said descriptive lists give the quantity of the pine timber reported by the examiners as having been found on each legal subdivision. Schedule A gives the estimate of timber within the Minnesota National Forest, on which 90 per cent of the timber is to be sold, and Schedule B gives the estimates of timber on land outside of the Minnesota National Forest, all of which timber is to be sold.

2. Bids for the timber on these lands will be opened at the district land office at Cass Lake, Minn., at 10 o'clock a. m., on June 11, 1926. In order to receive consideration, all bids must be filed in said district land office before the hour fixed for the opening of bids. The bids shall be in accordance with forms furnished said district land office. The right is reserved to reject any or all bids.

3. No bid will be received for a sum less than at the rate of $4 per 1,000 feet for Norway pine and $5 per 1,000 feet for white pine.

4. Bids may be for the timber on any separate section, and also on groups of 10 contiguous sections of land; the bids for timber on groups of sections may be in addition to bids for timber on separate sections. With a view to facilitating a comparison of bids, group bids have been arranged under the caption "recapitulation," with the areas

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[3] This circular is the last one issued containing rules and regulations for the sale and removal of pine timber on ceded Chippewa Indian lands, Minnesota.

of the lands embraced in each group stated, as well as the amount of timber. Bidders are not required to follow these groups, but it is recommended that they do so. Awards will be made to the highest bidders for said groups unless it clearly appears that more money will be realized by accepting bids differently grouped. Preference will be given any combination of bids which will realize the most money for the Indians and at the same time sell the most of the timber.

5. Each bid shall be accompanied by cash or a certified check for 20 per cent of the amount of such bid, according to the value of the timber, to be ascertained by multiplying the amount of timber to be sold, which in Schedule A is only 90 per cent of the Government estimate, by the price bid per 1,000 feet, the deposit to be retained and credited as part payment of the purchase price for the timber included in such bid should the bid be accepted and applied as provided in rule 24 below, but to be retained by the United States as a forfeit if the bid be accepted and the bond and agreement required by these rules and regulations be not furnished. In case cash accompanies the bid the register will deposit the same as a special fund in the nearest United States depository. The certified check and certificate of deposit referred to in this rule should be made out in favor of the Secretary of the Interior.

6. The register will number the bids consecutively as they are received, beginning with No. 1, noting on each bid the date and hour of its receipt. On opening the bids the register will indorse on the inclosures the number of the bid and the name of the bidder. He will make a list of the bids and will without delay forward the list, bids, and accompanying checks or certificates of deposit to the General Land Office.

7. Within 10 days from receipt of notice by telegraph that his bid has been accepted by the Secretary of the Interior each successful bidder will be required to enter into and file an agreement and bond on forms approved by the Secretary of the Interior, copies of which will be furnished by the General Land Office, the penalty of the bond to be of an amount which shall be 50 per cent of the value of the timber, ascertained as provided in rule 5, embraced in his accepted bid and purchase. There is no authority for reducing the penalty of a bond after partial performance. The bidder may submit a separate agreement and bond for each bid, or one agreement and bond for all the timber purchased by him, described in either Schedule A or Schedule B, as the case may be, the agreement and bond for the timber in each schedule to be separate, the agreement and bond to sufficiently identify and describe all the land. The bond shall be conditioned for the payment for said timber and for the faithful performance of said agreement, and for the observance of these regulations. The agreement and bond may be acknowledged by the purchaser of the timber, and the bond by sureties, before any officer authorized to take the acknowledgment of deeds in the State or Territory where executed, and the sufficiency of individual sureties must be certified by the United States judge or district attorney of the district where such sureties reside. In case of individual sureties, the parties will be required to justify in accordance with the special rules in regard thereto provided by the department.

8. Upon the filing in his office of said agreement and bond, duly executed, the register will immediately forward them to the General Land Office for transmission to the Secretary of the Interior. The right is reserved to reject any bond submitted.

9. Written notice of intention to begin removal of timber must be given by the purchaser to the superintendent of logging, Chippewa Indian lands, Cass Lake, Minn., at least 10 days in advance.

10. The superintendent of logging and his assistants, appointed under the said act of January 14, 1889, as amended by said act of June 27, 1902, shall supervise the cutting, scaling, and removal of the timber sold under the provisions of said act. It shall be their duty to see that the rules and regulations are fully complied with; to see that no timber other than pine is cut, except as is allowed by the secretary, and that no logs are removed from the place where banked until paid for; to see that all tops and refuse are promptly and properly burned or removed to prevent fire; to see that Indian labor is employed where practicable, and to supervise and direct the labor of the scalers. The superintendent shall make monthly reports of the progress of such work and of the time, habits, and competancy of his assistants and of the scalers, and he and his assistants shall generally perform such services in and about the sale of the pine timber on said lands and the cutting of the same therefrom and the care and protection of all timber on said lands as may be required of them by the said secretary.

11. The scalers shall see that before being removed from the tract where cut, every stick of timber is marked on both ends by the logger with a "U. S." marking hammer, and also that it is bark marked; and such scalers shall number and scale, under Scribner's rules, in the log after being cut and before the same is removed from the place where banked, all logs cut under the application and agreement under said act. Said scalers shall keep in suitable books for reference a record of the marks, also a complete list of numbers of all logs, with the scale of each log set opposite its number, said scale books to be open to the inspection of the check scaler or to any authorized Government representative at all times.

12. All timber must be scaled on the banking ground, landing, or skidway, and before it is placed on cars or put into the water.

13. The rules and regulations provided by the forester, and approved by the Secretary of the Interior, which are printed herewith, will govern in the cutting and removal of the timber from lands within the Minnesota National Forest. The superintendent of logging will as provided by law, supervise the cutting and scaling of the timber on said national forest, and see that the rules and regulations prescribed by the forester are complied with.

14. All trees shall be cut with a saw whenever practicable and as low down as practicable. In no case shall the height of the stump exceed the thickness or diameter of the tree 2 feet above the ground.

15. The maximum length for measurement of all white pine-logs shall be 16 feet, and of all Norway pine logs shall be 18 feet. Upon logs 24 inches or less in diameter 2 inches additional length, and upon logs over 24 inches in diameter 3 inches additional length, shall be allowed for trimming off battered and discolored timber. Longer logs shall be scaled as two or more logs. The length of logs shall

be so varied that all merchantable timber 6 inches and over at the top end shall be utilized.

16. All merchantable-pine timber in felled trees which is 6 inches or over at the small end shall be logged. Any such timber left in the woods shall be scaled under the direction of the superintendent of logging and paid for by the purchaser of the timber at double the regular stumpage rate. No tree shall be left lodged in process of felling.

17. Merchantable-pine timber used for booms, skids, dams, bridges, for building camps, or for any other purpose, shall be scaled and paid for by the purchaser of the timber at the regular stumpage rate. All trees cut for booms shall be carefully measured, and the booms shall be cut in such lengths as will allow all the timber to be cut into merchantable logs. Sufficient green timber, other than pine, may be cut and used for purposes incidental and necessary to the economical conduct of said logging operations upon payment therefor at such rate as may be fixed by the Secretary of the Interior. However, the use of timber for any of the purposes mentioned shall, whenever possible, be confined to unsalable material and to dead and down timber.

18. The location of log landings, loading works on the shores of lakes or streams, or along railroads, and of railroad sidetracks, outside of the Minnesota National Forest, shall be subject to the approval of the superintendent of logging.

19. So far as reasonable all branches of the logging operations shall keep pace with each other. In no instance will the brush piling or burning be allowed to fall behind the cutting and removing of logs. It is the duty of the superintendent and of his assistants under his direction to see that the cutting is as far as practicable on consolidated areas and is not distributed here and there over the entire tract.

20. All tops, brush, chunks, knotty sections, litter, or other unutilized portions of trees on lands outside of the Minnesota National Forest must be burned at the time of cutting, under the supervision of the superintendent of logging and his assistants, excepting tops, brush, etc., cut during the months of April, May, June, July, August, September, and October, which shall be piled at the time of cutting, the piles being compact and large enough to burn clean without repiling. The piles must not be near standing trees so as to endanger them and must be placed where there is least danger of the fire spreading. The burning is to be done at such time as the weather and conditions will permit and when it is safe to do so without danger of forest fires. The superintendent of logging and his assistants are to be the judges and to be consulted as to the proper time of burning, and the work must be done under their direction.

21. In case of the failure of a purchaser to comply with the directions of the superintendent of logging and his assistants in the matter of the piling and the burning of the brush and débris, the superintendent of logging shall have the same properly piled and burned and charge the expense thereof to the purchaser of the timber in the next monthly scale bill, first, however, giving the purchaser written

notice of his intention to pile and burn the brush and débris and allowing him 10 days from the date of such notice to comply with his instructions.

22. All instructions and demands from the superintendent or his assistants to or upon the loggers or purchasers shall be made in writing, including the demand for payment to be made when due, as hereinafter provided for.

23. The parties whose bid or bids may be accepted shall be required to cut and remove not less than 50 per cent of the timber embraced in their bid or bids on or before July 1, 1927, and the remainder by July 1, 1928. The entire amount of the timber in each such bid and contract must be cut and removed from the land where located on or before July 1, 1928. Failure to comply with any part of this regulation shall be sufficient cause to warrant the Secretary of the Interior to declare the bid and contract hereunder forfeited.

24. The money for the timber cut and scaled during each month shall become due and payable in monthly installments at the end of such month, or oftener, in the discretion of the superintendent of logging, and shall be paid before said logs are removed from the place where banked: *Provided*, That on the last payment required to be made on each bid or contract the 20 per cent deposit made at the time of the bid shall be applied as part payment, and in case the 20 per cent deposit exceeds the amount of the last payment required to be made on such bid or contract the excess of the 20 per cent deposit shall be applied as part payment of any other payments required to be made by the same purchaser. The timber may, by permission of the Commissioner of the General Land Office, be removed before the actual payment of the money in all cases where such course is recommended by the superintendent of logging and is approved by the proper Indian agent. If not paid when due, or within 30 days thereafter, and after written demand from the superintendent of logging, the contract and the money paid thereunder may be declared forfeited by the Secretary of the Interior, and the timber may be banked, shipped, and sold by the superintendent, under the direction of the Secretary of the Interior, and the deposit made at time of bid and the net proceeds, after deducting expenses of banking, shipping, and selling, applied to the amount due therefor from such purchaser or logger, and any excess shall be paid to him. If excess be due from the logger after such sale by the Secretary, he shall pay the same upon demand from the superintendent.

25. The scale bills must be approved by the superintendent of logging, and such approval confirmed by the superintendent of the Consolidated Chippewa Indian Agency, at Cass Lake, Minn., for the timber cut, after examination thereof and of the check scale, if any, and thereupon the superintendent shall demand payment, and such payment must be made to said Indian agent, who shall account therefor to the Commissioner of Indian Affairs, and also report the several amounts paid to the Commissioner of the General Land Office.

26. The decision of the superintendent of logging shall be final in the execution of the foregoing rules.

27. The violation of any of these rules, if persisted in, shall be deemed a sufficient cause for annulling the contract and canceling the sale of the stumpage. In case of damages caused by such violation of

the rules and annulment and cancellation of the contract and sale, demand for the amount thereof after ascertainment and approval by the Secretary of the Interior, shall be made by the superintendent of logging, and the purchaser will be allowed 30 days from such notice within which to pay the amount due.

William Spry, *Commissioner.*

Approved February 27, 1926.

E. C. Finney,
First Assistant Secretary.

RULES AND REGULATIONS OF THE FORESTER OF THE DEPARTMENT OF AGRICULTURE OF OCTOBER 21, 1903, AS AMENDED ON JUNE 23, 1910, FOR THE CUTTING AND REMOVAL OF 90 PER CENT OF THE PINE TIMBER ON CEDED CHIPPEWA LANDS WITHIN THE MINNESOTA NATIONAL FOREST

1. No tree shall be cut that is stamped with the letters "U. S."

2. No white pine or Norway (red) pine, 10 inches and under in diameter, 3 feet from the ground, shall be cut for any purpose, except where absolutely unavoidable in necessary logging operations.

3. All trees shall be cut with a saw whenever practicable.

4. In no case shall the height of the stump exceed the thickness or diameter of the tree 2 feet above the ground.

5. No tree shall be left lodged in process of felling.

6. So far as reasonable, all branches of the logging shall keep pace with each other. In no instance will the brush piling be allowed to fall behind the cutting and removing of logs.

7. All tops and litter from trees cut under these rules must be burned so as to be safe against fire, under the supervision of the inspector of the Bureau of Forestry, and at such time as he shall select, but the burning of tops or other material larger than 8 inches in diameter, or of tops or litter not made by logging under these rules will not be required. The piles must be compact and large enough to burn clean without repiling and must not be so near young growth or standing green trees as to endanger either of them and must be placed where there is least danger of the fire spreading.

If the purchaser fails to comply with the instructions of the supervisor of the Minnesota National Forest or of any of his assistants regarding the piling and burning of brush and débris, the superintendent of logging shall cause the same to be properly piled and burned and charge the expense thereof to the purchaser of the timber in the next monthly scale bill: *Provided*, That the purchaser shall first be given written notice that such action will be taken by the superintendent of logging and shall be allowed 10 days from the date of the notice within which to comply with said instructions.

8. Unnecessary damage to young growth or trees left for seed must be carefully avoided.

9. As few log roads as practicable shall be cut, nor shall they be made wider than is actually necessary.

10. All merchantable pine timber in felled trees which is 6 inches or over at the small end shall be logged. Any such timber left in the woods shall be scaled under the direction of the superintendent

of logging and paid for by the purchaser of the timber at double the regular stumpage rate.

11. The use of timber in constructing corduroys and bridges or for road work, shall be confined, whenever possible, to unsalable material and to dead and down timbers.

12. Merchantable pine timber used for booms, skids, dams, bridges, for building camps, or for any other purpose, shall be scaled, and paid for by the purchaser of the timber at the regular stumpage rate.

13. The location of log landings, loading works on the shores of lakes or streams, or along railroads, and of railroad side tracks, shall be subject to the approval of the inspector of the Bureau of Forestry.

14. All trees cut for booms shall be carefully measured, and the booms shall be cut in such lengths as will allow all the timber to be cut into merchantable logs.

15. The maximum length for measurement of all white pine logs shall be 16 feet and of all Norway pine logs shall be 18 feet. Upon logs 24 inches or less in diameter 2 inches additional length, and upon logs over 24 inches in diameter 3 inches additional length shall be allowed for trimming off battered and discolored timber. Longer logs shall be scaled as two or more logs.

16. The length of logs shall so be varied that all merchantable timber 6 inches and over at the top end shall be utilized.

17. The decision of the inspector of the Bureau of Forestry shall be final in the execution of the foregoing rules.

18. The violation of any of these rules, if persisted in, shall be deemed a sufficient cause for annulling the contract and canceling the sale of the stumpage.

(Schedules omitted.)

Circular No. 1175[4]

CHIPPEWA AGRICULTURAL LANDS, MINNESOTA

Department of the Interior,
General Land Office,
Washington, November 23, 1928.

Register, *Cass Lake, Minn.*

Sir: I inclose herewith a schedule showing certain Chippewa lands, comprising 5,232.05 acres of " cut-over " lands in the Red Lake Reservation ceded under the act of January 14, 1889 (25 Stat. 642), which lands are to be disposed of to homestead entrymen and settlers in accordance with the provisions of section 6 of the act of January 14, 1889 (25 Stat. 642); section 4 of the act of May 23, 1908 (35 Stat. 268), as construed by Rule 5 of the regulations adopted May 17, 1910 (38 L. D. 594), by these regulations, and as modified by Public Resolution No. 29 of February 14, 1920, as amended by Public Resolution No. 36, approved January 21, 1922 (see Circular 822, 49 L. D. 1); and to town-site entrymen under the laws applicable thereto as provided in the act of February 9, 1903 (32 Stat. 820), as follows:

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[4] This circular is the last one issued relating to homestead entries of ceded Chippewa agricultural lands.

2. *Preference right of ex-service men.*—The land shall be subject to entry only under the homestead laws, by ex-service men of the war with Germany, under the terms and conditions of said public resolutions and the regulations issued thereunder as set forth in said Circular No. 822 for a period of 91 days, beginning with the ninety-first day from the date hereof. They will be allowed to file their applications during the period of 20 days prior to the date fixed for opening the lands.

3. *General public.*—After the 91-day period fixed in paragraph No. 2 during which ex-service men are entitled to make entry, any of said lands remaining unentered will be subject to appropriation under applicable laws, by the general public, in accordance with said Circular No. 822. Simultaneous filing period of 20 days for the general public will be immediately prior to such opening. Prior to the date of restoration to general disposition as herein provided, no rights may be acquired to said lands by settlement in advance of entry or otherwise.

4. Former service men should file certified copies of their certificates of discharge with their applications to enter or sworn statements as to their military service, and regardless of the specific service relied upon to support a preference right, such applicants must show by their affidavits whether they were ever drafted for service under the provisions of the selective service act and refused to render such service or to wear the uniform of such service of the United States.

5. *Homestead qualifications.*—Homestead applicants for Chippewa lands must possess the necessary qualifications required in the case of ordinary homestead entries. Second and additional entries will be allowed under the laws and instructions governing such entries for public lands.

6. *Payments.*—Each entryman is required, by the act of January 14, 1889, to pay for the lands entered upon the sum of $1.25 for each acre, such payment to be made in five equal annual installments.

The usual fee and commissions must be paid at the time of original entry and when the commutation or final payment and proof are made. You will not collect any payment for lands in excess of 160 acres embraced in any entry when the original entry is allowed, as the payment for such excess area will be included in the whole amount required to be paid in installments. (See instructions of August 17, 1901, 31 L. D. 72, and September 6, 1901, 31 L. D. 106.)

Under section 8 of the act of May 20, 1908 (35 Stat. 169), entrymen for lands in the former Red Lake Reservation will be required to pay a drainage charge of 3 cents per acre. In all entries made for the lands you will note on the application and receipt the following: "Subject to act of May 20, 1908." (See 36 L. D. 477.)

The right of commutation under section 2301, Revised Statutes, is extended to ceded Chippewa lands by the act of March 3, 1905, (33 Stat. 1005), and in case of commutation you will require the entryman to pay the final homestead commissions in addition to the purchase price of the land, $1.25 per acre. (See 33 L. D. 551.)

7. *Lands erroneously sold for drainage.*—The following tracts are reported to have been sold by the State authorities under the act of May 20, 1908 (35 Stat. 169) viz:

(List of lands omitted.)

The sale of these lands prior to the date of opening to entry is not recognized by this office. Section 1 of the act of May 20, 1908 (above cited), provides in part as follows:

> That all lands in the State of Minnesota, when subject to entry, and all entered lands for which no final certificates have issued, are hereby made and declared to be subject to all of the provisions of the laws of said State relating to the drainage of swamp or overflowed lands for agricultural purposes * * *.

The lands above described have never previously been subject to entry and, therefore, were not subject to sale under the law cited.

8. Notices for publication, as required by said section 6 of the act of January 14, 1889, have been forwarded to the newspapers in which they are to be published. You will post a copy of said notice in your office.

Very respectfully,

William Spry, *Commissioner.*

Approved November 23, 1928.

E. C. Finney,
First Assistant Secretary.

(Schedule omitted.)

[Reported, 42 L. D. 74]

COEUR D'ALENE LANDS—ACT OF MARCH 3, 1913

Instructions

Department of the Interior,
General Land Office,
Washington, April 4, 1913.

Register and Receiver, *Coeur d'Alene, Idaho:*

Your attention is directed to Public Joint Resolution No. 72, approved March 3, 1913, which reads as follows:

> JOINT RESOLUTION Providing for extending provisions of the act authorizing extension of payments to homesteaders on the Coeur d'Alene Indian Reservation, Idaho
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of an Act of Congress approved April fifteenth, nineteen hundred and twelve, authorizing the extension of time within which to make payments of certain moneys by homestead entrymen upon the Coeur d'Alene Indian Reservation, in the State of Idaho, be extended and held to apply to payments that became due prior to the passage of the Act under the same conditions that apply to payments becoming due subsequent to the passage of the law. That nothing herein contained shall affect any valid adverse claim initiated prior to the passage of this resolution.

Said joint resolution is to be read in connection with the act of April 15, 1912 (37 Stat. 85), and the circular of May 2, 1912, issued thereunder (41 L. D. 1).

Very respectfully,

Fred Dennett, *Commissioner.*

Approved.

Lewis C. Laylin,
Assistant Secretary.

INSTRUCTIONS RELATIVE TO COEUR D'ALENE INDIAN LANDS

Department of the Interior,
General Land Office,
Washington, March 24, 1915.

Register and Receiver,
Coeur d'Alene, Idaho.

Sirs: I am in receipt of your letter of February 3, 1915, asking for instructions relative to the allowance of entries after May 1, 1915, for lands with the former Coeur d'Alene Indian Reservation, in Idaho.

Said reservation was opened to entry by the act of June 21, 1906 (34 Stat. 335), which among other things provides:

> * * * That the lands remaining undisposed of at the expiration of five years from the opening of the said lands to entry shall be sold to the highest bidder for cash, at not less than one dollar per acre, under rules and regulations to be prescribed by the Secretary of the Interior, and that any lands remaining unsold ten years after the said lands shall have been opened to entry may be sold to the highest bidder for cash without regard to the above minimum limit of price * * *

The lands were opened to entry on May 2, 1910, not on May 1, 1910, as stated in your letter. The latter date fell on Sunday.

In view of the foregoing you are directed not to allow any application for these lands which is received subsequent to May 1, 1915, for land which on that date is not covered by some right or appropriation initiated in pursuance of the aforesaid act of Congress. Land which on that date is covered by a valid settlement, may be entered thereafter and within the preference right period; and if a preference right of entry secured by contest is running on May 1, the successful contestant may be allowed to exercise it thereafter and within the preference right period. Land which on May 1 is covered by a valid existing entry, may be reentered should the land become vacant.

The purpose of Congress in making provision for the sale to the highest bidders of lands remaining undisposed of at the expiration of five years from the opening of the lands to entry, and thereafter, was evidently to effect a final disposition of the remaining lands and thus bring to a close the trust assumed by the United States, and in view of this fact if lands not disposed of at the expiration of five years from the opening of the lands to entry subsequently become subject to disposal and are unappropriated at such time as a sale to the highest bidders is directed, they will be listed for such disposition.

* * * * * * *

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 47 L. D. 400]

CIRCULAR No. 698

EXTENSIONS OF TIME FOR PAYMENTS TO HOMESTEADERS ON SOUTH HALF OF FORMER COLVILLE INDIAN RESERVATION, WASH.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 26, 1920.

Registers and Receivers, United States Land Offices, Spokane and Waterville, Wash.

SIRS: Your attention is directed to Public Resolution No. 33, approved March 19, 1920, which reads as follows:

> That the joint resolution entitled "Joint resolution providing additional time for the payment of purchase money under homestead entries within the former Colville Indian Reservation, Washington," approved March 11, 1918, be, and the same is hereby, amended to read as follows:
>
> "That the Secretary of the Interior is hereby authorized in his discretion, to extend for a period of one year the time for the payment of any annual installment due, or hereafter to become due, of the purchase price for lands sold under the act of Congress approved March 22, 1906 (Thirty-fourth Statutes, page 80), entitled 'An act to authorize the sale and disposition of surplus or unallotted lands of the diminished Colville Indian Reservation, in the State of Washington, and for other purposes,' and any payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided*, That the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due by the terms of the Act under which the entry was made: *Provided further*, That any and all payments must be made when due unless the entryman applies for an extension and pays interest for one year in advance of 5 per centum per annum upon the amount due as herein provided, and patent shall be withheld until full and final payment of the purchase price is made in accordance with the provisions hereof: *And provided further*, That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended as herein provided shall forfeit the entry and the same shall be canceled and any and all payments theretofore made shall be forfeited."

The only material change made by the said public resolution in the act of March 11, 1918, is that the public resolution permits the same installments of purchase money to be extended from year to year upon the payment of interest in advance at the rate of 5 per cent per annum, subject to the condition "that the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due by the terms of the act under which the entry was made," while the act of March 11, 1918, did not permit any installment to be extended more than once or for more than one year.

You will promptly serve notice on all persons whose payments are in arrears that they will be allowed 30 days from receipt of notice within which to pay the sums due, without interest, or to secure extensions of time for the payments by paying interest thereon at the rate of 5 per cent per annum from the dates when the payments become due to the next anniversaries of the dates of the entries occurring after such notice, and that in the event of their failure to take such action within the time allowed, you will report their entries to this office for cancellation.

Amounts paid as interest should be noted on the receipts and abstracts of moneys received with the fact that they were paid in conformity with the said public resolution.

Final certificate and patent will not issue under any entry until the full payment has been made.

After extensions of time for payments on account of military or naval service, further extensions may be granted under the said Public Resolution No. 33 and in the granting of such further extensions you will observe the direction given in Circular No. 647 dated June 9, 1919, that the period of military or naval service should not be considered a part of the time originally allowed for the completion of the payments.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved May 26, 1920.

Alexander T. Vogelsang,
First Assistant Secretary.

PERIOD FOR FILING ON DIMINISHED COLVILLE INDIAN RESERVATION, WASH., EXTENDED

Department of the Interior,
General Land Office,
Washington, July 1, 1926.

Register, *Spokane, Wash.*

Sir: The act of Congress, approved May 17, 1926 (44 Stat. 558), directs:

> That the period provided by law for the filing of homestead entries upon the lands of the south half of the diminished Colville Indian Reservation in the State of Washington, as provided in the act of Congress, approved March 22, 1906, as amended by the act of Congress approved May 9, 1922, be, and is hereby, extended for a period of five years from and after the 4th day of September, 1926.

You will post a notice of this act in your office and will give as much publicity as possible thereto without expense to the Government. No formal regulations will be issued but the land will remain subject to homestead entry until September 4, 1931.

Very respectfully,

D. K. Parrott,
Acting Assistant Commissioner.

REAPPRAISEMENT OF COLVILLE INDIAN LANDS

Department of the Interior,
Office of Indian Affairs,
Washington, July 12, 1927.

The honorable the Secretary of the Interior.

Sir:

* * * * * * *

The law under which these lands have been reclassified and reappraised is found in the act of June 6, 1912 (37 Stat. 125), which provides:

That the Secretary of the Interior be, and he is hereby authorized to cause to be classified or reclassified and appraised or reappraised, in such manner as he may deem advisable, the unallotted or otherwise unreserved lands within any Indian reservation opened to settlement and entry but not classified and appraised in the manner provided for in the act or acts opening such reservations to settlement and entry, or where the existing classification or appraisement is, in the opinion of the Secretary of the Interior, erroneous.

Considering the long period that has passed since the original appraisements were made, and the continued filing of applications for reappraisement, it is the opinion of this office that action should be taken to bring the matter definitely to an end. It is believed that ample authority is vested in the Secretary of the Interior under the act above cited, to set a definite date after which no further applications for reappraisement will be considered. It is also believed that if the action proposed is taken, it will result in settling the condition of unrest and dissatisfaction that now prevails among many of the settlers of the reservation.

It is therefore recommended that no further applications for reappraisement involving Colville lands be considered unless filed in the local land office on or before August 31, 1927. It is also recommended that in those cases where action has once been taken on an application for reappraisement, that no appeal or supplemental application for reappraisement be considered.

If these recommendations are approved a copy of this letter will be furnished the superintendent of the Colville Agency with instructions to give the matter all possible publicity among the residents of the reservation. A copy will also be furnished the Commissioner of the General Land Office with request that the local land office be notified to give the matter publicity through the local press as a matter of news and without expense to the Government.

Respectfully,

CHAS. H. BURKE.

Approved July 13, 1927.

JOHN B. EDWARDS,
Assistant Secretary.

[Reported, 44 L. D. 121]

CROW INDIAN LANDS—COAL CLASSIFICATION

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, June 1, 1915.

SWEENEY, *Assistant Secretary:*

I am in receipt of your (Commissioner of the General Land Office) letter of January 29, 1915, requesting instructions as to certain tracts within the former Crow Indian Reservation, which have been sold and later classified as coal.

The act of April 27, 1904 (33 Stat. 352), providing for the disposition of certain lands in the ceded Crow Indian Reservation in Montana fixed a price for the lands at $4 per acre, when entered under the homestead law. As to lands entered under the mineral land laws the act provided that the price should be that fixed by existing law but in no event less than that fixed for lands entered under the homestead laws. Section 5 of the act further provided:

> That when, in the judgment of the President, no more of the land herein ceded can be disposed of at said price, he may by proclamation, to be repeated at his discretion, sell from time to time the remaining land subject to the provisions of the homestead law or otherwise as he may deem most advantageous, at such price or prices, in such manner, upon such conditions, with such restrictions, and upon such terms as he may deem best for all the interests concerned.

Under the above authority the President by proclamation of September 9, 1910 (36 Stat. 2742), directed that all of the unentered, nonmineral, unsurveyed lands be sold at public auction at a price not less than $2 per acre. The purchaser of each tract was required to pay one-fifth of the price down, the remainder to be paid in four equal annual installments. The proclamation further provided as follows:

> If any purchaser shall at any time fail to make any payment when it becomes due all rights under his purchase, and all moneys theretofore paid thereunder will be forfeited. All lands offered but not sold, at the sale herein directed, shall thereafter be subject to purchase at private sale in the areas, under the terms, conditions, and limitations mentioned in this proclamation at $2 per acre.

Prior to the sale under the authority of the above proclamation a plat of the ceded lands of the Crow Reservation was prepared upon which was marked as reserved certain lands not to be sold because they were coal in character. Some 57 tracts which were sold at the first sale were later, upon July 13, 1912, reported by the Geological Survey as containing coal. They were classified August 12, 1913, as coal land, the price being fixed at from $10 to $30 per acre. As to these 57 tracts final payment of the purchase price had not been made at the time of the classification but such payments have now been made and the question presented is whether final certificate should issue with a reservation of the coal deposit to the United States or without such reservation.

You express the opinion that the lands were sold at the time of their offering, the equitable title vesting at that time, subject to defeasance in case of failure to pay the deferred installment. At the time of the sale the existence of coal under these particular tracts was not known, in fact they had been in effect classified as noncoal.

The United States in offering these lands for sale had through the Geological Survey classified the areas into nonmineral and mineral. The lands involved were offered for sale as noncoal and were purchased upon that basis. It would seem, therefore, that as a matter of fair dealing the sale so made should be consumated in the regular manner, that is with the regular final certificate and patent without reservation of the coal deposits be issued.

I am inclined to concur with the view expressed by you that an equitable title subject to defeasance vested at the date of the sale, and there being no known coal under the tracts at that time the purchaser is entitled to an absolute patent. The act also authorizes the President to dispose of the lands remaining unentered upon such terms and conditions as he sees fit. There is, therefore, ample authority granted by Congress to dispose of the land, even if coal, upon such terms as may be deemed advisable. Even assuming that under the law it might be within the power of the department to require these purchasers to take a limited patent, under the circumstances of the sale in which the tracts were offered by the United States as nonmineral, I am of the opinion that absolute patents should be issued.

The above renders it unnecessary to express any opinion upon the questions discussed by you as to whether such sales fall within the provisions of the act of March 3, 1909 (35 Stat. 844), and also whether the final proviso of said act would require that a patent without reservation be issued

You are accordingly instructed to have final certificates and patents without reservation of the coal deposits issued and pursue the same course in similar cases.

[Reported, 51 L. D. 490]

Circular No. 1080

INSTRUCTIONS UNDER PROCLAMATION EXTENDING TIME FOR PAYMENT ON CROW INDIAN LANDS

Department of the Interior,
General Land Office,
Washington, July 14, 1926.

Register, *Billings, Mont.*

Sir: The President's proclamation issued June 5, 1926, providing for a further extension of time for payment by purchasers and entrymen under the President's proclamations of September 28, 1914 (38 Stat. 2029), and April 6, 1917 (49 Stat. 1653), of lands in the ceded portion of the Crow Indian Reservation, Mont., directs:

> That any purchaser or entryman of lands within said former reservation who is unable to pay the purchase money due under his purchase or entry made under the said proclamation of September 28, 1914, or the said proclamation of April 6, 1917, and who has complied with the provisions of the proclamation of June 9, 1924, upon filing in the local land office an affidavit corroborated by two persons setting out his inability to make the required payment of principal and satisfactory reasons therefor shall be granted an extension of time until the 1927 anniversary of the date of his entry or purchase, upon the payment to the register of the district land office of interest at the rate of 5 per cent per annum on the amounts extended from the maturities thereof to the expiration of the period of extension. The district land office will promptly notify all purchasers and entrymen entitled to the extension of the manner in which it may be obtained. If the affidavit is not filed and the interest paid within 30 days from receipt of notice, or if, within such time, the amounts in arrears are not paid in full, the purchases or entries for which the amounts are due will be reported by the district land office to the General Land Office for cancellation.

Pursuant to said Proclamation the following regulations are prescribed:

1. The said proclamation of September 28, 1914, provided that one-third of the price of the land must be paid when the entry or purchase is made. In case of a purchase, the balance of the price must be paid in two equal payments, one year and two years thereafter, and in case of an entry in two equal payments, three years and four years thereafter, unless paid sooner. The said proclamation of April 6, 1917, provided that one-fifth of the purchase price must be paid on the day following the sale and that the balance must be paid in four equal annual instalments in one, two, three, and four years after the date of sale unless paid sooner. By President's proclamations of May 5, 1920 (41 Stat. 1793), August 11, 1921 (42 Stat. 2246), July 10, 1922 (42 Stat. 2281), December 18, 1923 (43 Stat. 1931), and June

9, 1924 (43 Stat. 1955), extensions of time were allowed until the 1925 anniversaries of the dates of the purchases and entries made under the said proclamations of September 28, 1914 and April 6, 1917. Under the present proclamation, an extension of time to the 1927 anniversaries of said purchases and entries may be secured under the conditions specified therein only by those purchasers and entrymen who have complied with the provisions of the proclamation of June 9, 1924.

2. Within 30 days from receipt of notice to be given by you immediately, any purchaser or entryman whose payments both of principal and interest are in default at the time of such receipt must pay in full the amounts due; any purchaser or entryman whose payments of principal only are in default at the time of such receipt either must pay in full the amounts due or he may file in your office a corroborated affidavit setting out his inability to do so, and the reasons therefor, accompanied by interest at the rate of 5 per cent per annum on the amounts for which an extension is sought.

3. The time for any payment can not be extended to a date beyond the 1927 anniversary.

4. Proof may be submitted at any time before such anniversary provided the requirements of the law as to payments are complied with.

5. No extension will be allowed unless the affidavit and interest as herein required are transmitted to your office within the time allowed.

You will forward a copy of these instructions to each purchaser or entryman who is affected thereby advising him that in order to secure the benefits of said proclamation he must comply with its requirements as herein explained, and that in the event of his failure to take such action within the time allowed, the purchase or entry will be reported for cancellation and forfeiture of payments without further notice to him.

In those cases where an extension of time may be obtained, should a satisfactory affidavit be filed and the required interest paid, you will stamp the affidavit "Allowed" and transmit with your regular returns. You will in due time report the cases in which no action has been taken, transmitting evidence of service of notice.

Very respectfully,

William Spry, *Commissioner.*

Approved July 14, 1926.

E. C. Finney,
First Assistant Secretary.

OPENING OF LANDS IN THE FLATHEAD INDIAN RESERVATION, MONT.

Department of the Interior,
General Land Office,
Washington, April 22, 1918.[5]

Register and Receiver, Kalispell and Missoula, Mont.

Sirs: I inclose herewith a schedule of Flathead Indian lands, which have been duly classified and appraised in accordance with the provisions of the acts of April 23, 1904 (33 Stat. 302), and May 18, 1916 (39 Stat. 123).

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[5] This circular is the last one issued relating to homestead entries of Flathead Indian lands, Montana. For the requirements in connection with entries of lands in the Flathead project, see circular of Mar. 10, 1915, p. 1233.

The schedule includes in the Missoula district, 1,233.21 acres of lands, which have been appraised at $7,507.59, an average of $6.08 per acre, and the estimates show that said lands contain 3,381 M feet of timber, which has been appraised at $8,173.50, or an average of $2.42 per M feet. In the Kalispell district, there are 3,521.35 acres, appraised at $13,481.56, an average of $3.83 per acre, and these lands contain 13,982 M feet of timber, which has been appraised at $33,379, an average of $2.39 per M feet. The schedule for both districts contains a total of 4,754.56 acres, which were appraised at $20,989.15, and these lands contain 17,363 M feet of timber appraised at $41,552.50 The total value of the land and timber is $62,541.65, and the total initial payment required, if the lands are entered in accordance with the schedule, is $49,132.15.

The schedule gives the appraised price of the land and timber separately and the total appraised price of both together, but not the price per acre or per M feet. The price per acre for each legal subdivision is uniform, and can be ascertained by dividing the price of the land by the acreage.

These lands will be disposed of under the homestead laws and the following regulations, as authorized by the acts of Congress mentioned above.

1. *Units.*—To prevent confusion and more readily to dispose of conflicts, the lands have been arranged in units of not exceeding 160 acres each, indicated by tract numbers, and during the period of simultaneous applications mentioned in paragraph No. 2, all applications for these lands shall be filed for a unit or part of a unit, as thus arranged. An application filed during said period for lands embraced in more than one unit shall be rejected.

2. *Simultaneous applications.*—Any person qualified to make a homestead entry for said lands may file one application, accompanied by the required deposit as hereinafter specified, for a unit or part of a unit, at the land office of the district in which the land is located, either at Kalispell or Missoula, Mont., between 9 o'clock a. m., standard time, Saturday, June 1, 1918, and 12 o'clock noon, on Saturday, June 15, 1918. All applications filed during said period will be treated as filed simultaneously. Any person having only an additional homestead right for less than 160 acres, may file an application for such portion of a unit as he may be entitled to enter, the land to be described according to legal subdivisions.

3. *Disposition of applications.*—The registers of said land offices will note on all applications received at or prior to 12 o'clock noon, June 15, 1918, the date and hour of receipt, and whether the land applied for is subject to disposition, according to the land office records. There shall also be appropriately indicated on a map of the reservation posted for public inspection the tracts for which applications have been filed. Where there is no conflict such applications, if in proper form and accompanied by the required payments, will be allowed immediately after the close of the period mentioned in paragraph 2. Where there are applications conflicting in whole or in part, the rights of the several applicants will be determined by a public drawing, at the United States land office at Missoula, Mont.,

beginning at 10 o'clock a. m., standard time, on Monday, June 17, 1918, or as soon thereafter as practicable, for lands in the Missoula district, and at the United States land office at Kalispell, Mont., beginning at 10 o'clock a. m., standard time, on Thursday, June 20, 1918, or as soon thereafter as practicable for lands in the Kalispell district.

The names of the conflicting applicants will be written on cards and each of these cards shall be placed in an envelope upon which there is no distinctive or identifying mark. These envelopes shall be thoroughly and impartially mixed, and then drawn, one at a time, by some disinterested person. As the envelopes are drawn, the cards shall be numbered, beginning with 1, and fastened to the applications of the respective persons, which shall be the order in which the applications shall be acted upon. If an applicant fails to secure any of the land applied for, his application shall be rejected. If he obtains part but not all of the land applied for, he shall be allowed 30 days from receipt of notice within which to notify the register and receiver whether to allow his application for the part obtained or to reject it in its entirety. If he does not notify the register and receiver within the time allowed, the application will be rejected.

4. *Subsequent applications.*—After the period mentioned in paragraph 2 has expired, applicants may disregard said units in making their applications, and the applications will be disposed of by the register and receiver in the usual way in the order in which they are filed in the district land office.

5. *Execution and presentation of applications.*—Applications to enter may be executed before the register or the receiver of the United States land office for the district in which the land is situated, or before a United States commissioner, or a judge or a clerk of a court of record in the county in which the land is situated, or before any such officer outside the county and in the land district who is nearest and most accessible to the land. All applications must be presented, with the required payment, to the register and receiver, in person, by mail, or otherwise.

6. *Payments.*—Under the laws mentioned above, each entryman is required at the time of making entry, to pay one-third of the purchase price of the land, the balance in five equal annual installments, and in addition, where the land is classified as timberland, the total price of the timber, as well as the regular land-office fee and commissions. The fee is $5 on each entry of less than 81 acres and $10 on each entry of 81 acres or more. The commissions for these lands are $1.50 for each 40-acre tract, which is equal to 3¾ cents per acre. The schedule indicates in the last column the initial payment, including the price of the land, timber, fee and commissions, required on each unit.

Each person presenting an application to enter these lands must accompany such application with the required first payment. The payment must be made in cash, by a certified check on a national or State bank or trust company which can be cashed without cost to the Government, or by a post office money order, made payable to the receiver of the land office. No other form of payment will be accepted. If an application is rejected the money paid will be returned. If an application is allowed in part, the money paid in excess of the required amount will be returned.

* * * * * * *

10. *Completion of title.*—Title to these lands may be acquired by complying with the 3-year homestead law, or commutation proof may be submitted on all homestead entries.

11. *Forfeiture for nonpayment and reentry of lands.*—In case any entryman fails to make the annual payments, or any of them when due all right in and to the lands covered by his entry shall cease; and any payment theretofore made shall be forfeited and the entry canceled. In the event of the cancellation of an entry for any cause, the land shall be again subject to entry under the provisions of the homestead law at the price fixed therefor, but in all cases the full amount of purchase money must be paid on or before the offer of final proof.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved April 22, 1918.

Alexander T. Vogelsang,
First Assistant Secretary.

(Schedule omitted.)

WITHDRAWAL OF FLATHEAD INDIAN LANDS, MONTANA

Department of the Interior,
Washington, October 14, 1921.

The Commissioner of the General Land Office.

My Dear Mr. Commissioner: Because of proposed legislation (S. 3454) providing for allotments for undisposed of areas within the former Flathead Indian Reservation, Mont., the department on September 22, 1919, instructed you to take immediate steps to withhold from sale or entry all lands unsold and unentered within said former reservation until otherwise directed.

On March 3, 1920, the department approved your letter to the local land officers at Missoula, Mont., in which the order of withdrawal was construed as not affecting the rights of successful contestants, if duly qualified, to reenter lands embraced in entries canceled on contest.

The said order of withdrawal dated September 22, 1919, is hereby modified so as to permit entry by qualified applicants of lands relinquished which at the date of the order of withdrawal were embraced in entries of record, if otherwise subject to disposition.

Respectfully,

E. C. Finney,
First Assistant Secretary.

Circular No. 950[6]

REGULATIONS FOR THE SALE OF THE VILLA SITE LOTS AROUND FLATHEAD LAKE, IN THE FORMER FLATHEAD INDIAN RESERVATION, MONT.

Department of the Interior,
General Land Office,
Washington, *July 16*, *1924*.

The Commissioner of the General Land Office.

Sir: Under the provisions of the act of April 12, 1910 (36 Stat. 296), you are directed to cause the lots subject to disposition surveyed as villa sites around Flathead Lake, in the former Flathead Indian Reservation, Mont., to be offered for sale at public outcry under the supervision of the Superintendent of Opening and Sale of Indian Lands, at not less than the prices indicated on the accompanying schedule, unless reappraised in the manner hereinafter provided. The lots will be offered at the United States Land Office, Kalispell, Mont., beginning 10 o'clock a. m., August 12, 1924, and continuing thereafter from day to day as long as may be necessary, Sundays and holidays excepted, in the manner and under the terms hereinafter prescribed.

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—Payments will be required as follows: At least 25 per cent of the bid price of each lot sold must be paid on the date of the sale and the remainder, if the price bid is $50 or less, within 1 year from the date of sale; if the price bid be over $50 and less than $100, 75 per cent of the cost may be divided into 2 equal payments, due, respectively, 1 and 2 years from the date of the sale; if the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into 3 equal payments, due, respectively, 1, 2, and 3 years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; the receiver in such case will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser, and the final entry and patent will issue to the original purchaser when all payments are made. All lots affected by the easement provided for in the act of August 24, 1912 (37 Stat. 527), as shown upon the approved plats of said lots, will be sold subject to said easement.

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[6] See Circular No. 1000, p. 701.

Forfeiture.—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition at the next public sale thereafter as provided herein. Lots remaining unsold at the close of sale, or thereafter declared forfeited for nonpayment of any part of the purchase price under the terms of the sale, will be subject to disposition at future public sales, the dates thereof to be fixed in the manner herein provided.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both.

The Superintendent of Opening and Sale of Indian Lands, or any assistant so designated, will be and he is hereby authorized, in his discretion, to reappraise any lot, and by such reappraisal may fix a greater or less minimum price for such lot than that indicated in the accompanying schedule. He may reject any and all bids for any lot, and at any time suspend, adjourn, or postpone the sale to such time and place as he may deem proper, and the sale so adjourned may be further adjourned to a fixed date by public announcement of the person conducting the sale.

Very respectfully,

E. C. Finney,
First Assistant Secretary.

(Schedule omitted.)

Circular No. 1000

REGULATIONS FOR THE SALE OF THE VILLA-SITE LOTS AROUND FLATHEAD LAKE, MONT.

Department of the Interior,
General Land Office,
Washington, April 25, 1925.

Register and Receiver,
Great Falls, Mont.

Gentlemen: On August 12 and 13, 1924, a sale of villa-site lots around Flathead Lake in the former Flathead Indian Reservation was held at the local office at Kalispell, Mont., under the provisions of the act of April 12, 1910 (36 Stat. 296). Upon the conclusion of the public sale the sale was adjourned to May 12, 1925, to be held at the land office at Kalispell.

In view of the fact that the office at Kalispell is to be abolished on April 30 the sale is hereby postponed until Tuesday, July 7, 1925, and will be held at Polson, Mont., under the direction of the Commissioner of the General Land Office. The lots will be offered at 10 o'clock a. m. on said date and continued as long as necessary under the regulations, dated July 16, 1924, prescribed for the last sale. A list of the unsold lots at the reappraised price is inclosed. The superintendent of the sale is hereby authorized, in his discretion, to reappraise any lot and may fix a greater or less minimum price for such lot than that indicated in the accompanying schedule. He may reject any and all bids for any lot and at any time suspend, adjourn, or postpone the sale.

It is desired that you give this sale as wide publicity as possible without expense to this office, by giving notice to the press and by posting notice of the sale in your office and by furnishing notices of the sale to a few of the leading post offices in the vicinity of the land including Polson and Kalispell for posting in their offices. Copies of the regulations of July 16, 1924, will be sent you.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved April 25, 1925.

E. C. FINNEY,
First Assistant Secretary.

(Schedule omitted.)

[Reported, 47 L. D. 416]

CIRCULAR NO. 706

INSTRUCTIONS RE SALE OF ISOLATED TRACTS IN FORT BERTHOLD RESERVATION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 28, 1920.

REGISTER AND RECEIVER, *Minot, N. Dak.*

SIRS: Your attention is directed to the act of Congress approved May 10, 1920 (41 Stat. 595), entitled "An act for the sale of isolated tracts in the former Fort Berthold Indian Reservation, N. Dak." Said act reads as follows:

> That the provisions of section 2455 of the Revised Statutes of the United States as amended by the Act of March 28, 1912 (Thirty-seventh Statutes at Large, page 77), relating to the sale at public auction of isolated tracts of the public domain be, and the same are hereby, extended and made applicable to lands within the portion of the Fort Berthold Indian Reservation, North Dakota, opened under the act of June 1, 1910 (Thirty-sixth Statutes at Large, page 455): *Provided,* That the provisions of this Act shall not apply to lands which are not subject to homestead entry: *Provided further,* That purchasers of land under this Act shall pay for the lands not less than the price fixed in the law opening such lands to homestead entry.

The Fort Berthold Indian lands subject to sale under said act are only those which have been opened under the act of June 1, 1910 (36 Stat. 455), to homestead entry. Any application for sale, under said act, of Fort Berthold Indian lands not subject to homestead entry should be rejected.

Applications to purchase these lands as isolated tracts and sales thereof as such tracts will be governed by the general regulations governing the offering at public sale of public lands under said section 2455, as amended by said act of March 28, 1912, except that the minimum price of the lands will be the appraised price under the act of June 1, 1910. See instructions of April 16, 1920 (Circular No. 684).[7]

The lands affected by said act of June 1, 1910 (36 Stat. 455), were opened to entry under regulations of June 29, 1911 (40 L. D. 154).

In cases where the applications show the lands to be rough and mountainous, you will refer the applications to the Chief of Field Division for report as to the character of the land involved.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved June 28, 1920.

S. G. Hopkins,
Assistant Secretary.

[Reported, 50 L. D. 557]

Circular No. 944

INSTRUCTIONS RELATIVE TO EXTENSIONS OF TIME FOR PAYMENTS FOR FORT BERTHOLD INDIAN LANDS

Department of the Interior,
General Land Office,
Washington, June 19, 1924.

Register and Receiver,
Bismarck, N. Dak.

Gentlemen: The act of May 24, 1924 (43 Stat. 139), provides:

> That any homestead entryman or purchaser of Government lands within the Fort Berthold Indian Reservation in North Dakota who is unable to make payment of purchase money due under his entry or contract of purchase as required by existing law or regulations, on application duly verified showing that he is unable to make payment as required, shall be granted an extension to the 1925 anniversary of the date of his entry or contract of purchase upon payment of interest in advance at the rate of 5 per centum per annum on the amounts due from the maturity thereof to the said anniversary; and if at the expiration of the extended period the entryman or purchaser is still unable to make the payment he may, upon the same terms and conditions, in the discretion of the Secretary of the Interior, be granted such further extensions of time, not exceeding a period three years, as the facts warrant.

The act applies both to entries made under the act of June 1, 1910 (36 Stat. 455), and those made under the act of Aug. 3, 1914 (38 Stat. 681).

Previous requirements in the matter of payments.—The provisions of the act of June 1, 1910, were specifically extended to lands to be opened under the act of August 3, 1914. The said act of June 1, 1910, provides that one-fifth of the purchase price shall be paid at the time of entry and the balance in five equal annual installments commencing two years from the date of entry. Section 1 of the act of May 28, 1914 (38 Stat. 383), authorizes an extension of time for one year for the payment of any annual installment upon the payment of the interest in advance at the rate of 5 per cent per annum on the amounts so extended and that any payment so extended may annually thereafter be extended in like manner, provided that all payments are completed within a period not exceeding one year after the last payment becomes due under the act under which the entry was made. Accordingly the utmost time allowed for completion of payments on entries made under the act of June 1, 1910, or under the act of August 3, 1914, was seven years from the date of entry.

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[7] Circular No. 684 was revised Apr. 7, 1928. See p. 742.

The said act of May 24, 1924, modifies the above requirements in the following respects:

On those entries on which the 7-year period for payment allowed under the acts cited above expires prior to the 1925 anniversary thereof, an extension of time may be obtained to said anniversary upon the filing of an application duly verified, accompanied by payment of interest in advance on the amounts due from the maturity thereof to the 1925 anniversary of the dates of the entries at the rate of 5 per cent per annum. If at the expiration of the extended period entryman is still unable to make the required payment, further extensions may be obtained from year to year in the same manner, but no extension will be granted beyond a period of three years from the 1925 anniversary of the date of the entry.

You are directed to serve notice on each entryman who is in default in the matter of payments either of principal or interest that if the required sums are not paid or an extension of time obtained as herein provided within 30 days from receipt of notice hereof, you will report his entry to this office for cancellation.

Very respectfully,

William Spry, *Commissioner.*

Approved June 19, 1924.

E. C. Finney,
First Assistant Secretary.

FORT HALL INDIAN LANDS MADE SUBJECT TO SECTION 2455, UNITED STATES REVISED STATUTES

Department of the Interior,
General Land Office,
Washington, June 26, 1926.

Register, *Blackfoot, Idaho.*

Sir: The act of May 19, 1926 (44 Stat. 566), entitled "An act extending the provisions of section 2455 of the United States Revised Statutes to ceded lands of the Fort Hall Indian Reservation," provides:

> That the provisions of section 2455, United States Revised Statutes, as amended by the act of June 27, 1906 (Thirty-fourth Statutes at Large, page 517), and by the act of March 28, 1912 (Thirty-seventh Statutes at Large, page 77), are made applicable to the ceded lands on the former Fort Hall Indian Reservation: *Provided,* That no land shall be sold at less than the price fixed by the law opening the lands to homestead entry.

You will take notice that this act allows lands on the former Fort Hall Indian Reservation to be sold under section 2455, but that the lands can not be sold at less than the price fixed by law for opening the lands to homestead entry.

Very respectfully,

THOS. C. HAVELL,
Assistant Commissioner.

[Reported, 46 L. D. 75]

CIRCULAR NO. 544

FORT PECK INDIAN LANDS—TIME FOR PAYMENT EXTENDED—ACT OF MARCH 2, 1917 (39 STAT. 994)

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 13, 1917.

Register and Receiver, United States Land Office, Glasgow, Mont.:

SIRS: Your attention is directed to section 1 of the act of Congress of March 2, 1917 (39 Stat. 994), which provides:

> That any person who has made or shall make homestead entry under the Act approved May thirtieth, nineteen hundred and eight (Thirty-fifth Statutes, page five hundred and fifty-eight), entitled "An Act for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment," may obtain extensions of time within which to pay one-half of any installments of purchase money, which have become due and are unpaid or which will hereafter become due by paying to the register and receiver of the land office for the district in which the lands are situated interest in advance on the amounts due and for the period of the desired extension at the rate of five per centum per annum, and any payment so extended may at its maturity be again extended in like manner: *Provided*, That payment of interest on installments now due must be made in order to secure the extension; interest payments must hereafter be made annually before the maturity of the payments to be extended, and no payment will be postponed for more than eight years from the date of entry nor will any extension be made for less than one year: *Provided further*, That if commutation proof is submitted all the unpaid payments must be made at that time.

2. The first entries for the lands, opened under the act of May 30, 1908, were made in May, 1914; under its provisions each homesteader was required to pay one-fifth of the appraised price of a tract at the time of filing application therefor, the balance being payable in five equal installments due respectively in one, two, three, four, and five years after the date of the entry, without interest. Under the present act an extension may be secured as to one-half of each installment, on all entries heretofore made and which may hereafter be made.

3. The act provides that no extension shall be made for less than one year and clearly contemplates that interest and installment periods coincide. In order that all entrymen may have due notice of this act, compliance with its provisions will not be insisted upon until November 1, 1917. On or before that date any homesteader who is

then in default in any installment payment or payments must either pay the amounts due in full, without interest, under the provisions of the act of May 30, 1908 (35 Stat. 558), or he may pay interest at the rate of 5 per cent per annum on all moneys due prior to November 1, 1917, from date of maturity to the date when the next installment after November 1, 1917, is due on his entry. Should he fail to do one of these things on or before the date named, his entry will be canceled without further notice.

On or before the date when the next installment after November 1, 1917, falls due, at least one-half of the moneys past due and one-half of the installment then due must be paid, as well as 5 per cent interest on the half of any installment or installments for which extension of payment is desired, as advance interest on such deferred payments for one year.

4. As each succeeding installment falls due, the homesteader, instead of paying the amount in full, may pay one-half thereof and 5 per cent on the other half as interest for the next 12 months. Moreover, any half installment which has been extended may be extended for additional years by payment of 5 per cent thereon each year, as interest in advance.

5. No payment can be extended for a time longer than eight years from the date of the entry, and proof may be submitted within that period, provided the requirements of the law as to payments are complied with.

6. No special form of application for extension of time to make payment will be required; the payment of the required sums will be sufficient and the receiver will note upon the receipts and on the abstracts of collections the nature and purpose of the payment.

7. If compliance with the provisions of the act of May 30, 1908, and of the present act as to payments be continued, 3-year or 5-year proof on an entry may be submitted without the necessity of paying for the land in full. Such proof will be accepted by you if satisfactory, subject to the payment of the unpaid portions of the purchase price, but final certificate will not issue until full payment is made; and the proof will be accepted by this office on the same conditions if found satisfactory. After acceptance of such proof, the claim is subject to transfer, and you will issue all notices in connection with the case, not only to the entryman, but to the transferee, provided notice of the transfer be duly filed in your office; but when payment in full is made, final certificate will issue in the name of the entryman.

8. If commutation proof be submitted, payment of the price of the land in full must be made.

9. The act of March 2, 1917, makes no change in the requirements as to entries made under the provisions of the reclamation act, except as to the extension of the payments of the price of the land, hereinbefore discussed.

10. You will forward copies of these instructions to all homesteaders for these lands who are in arrears as to one or more installments, and to their transferees (if there be any), advising them that,

in order to secure the benefits of the act, they must comply with its requirements, as herein explained, by November 1, 1917.

Very respectfully,

C. M. Bruce, *Acting Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 47 L. D. 335]

Circular No. 667

INSTRUCTIONS RELATIVE TO PAYMENTS FOR LANDS WITHIN FORMER FORT PECK INDIAN RESERVATION, MONTANA

Department of the Interior,
General Land Office,
Washington, January 23, 1920.

Register and Receiver, Glasgow, Mont.

Sirs: The act of December 11, 1919 (41 Stat. 365), provides—

> That any person who has made homestead entry under the provisions of the act of Congress approved May 30, 1908 (Thirty-fifth Statutes at Large, page 558), entitled "An act for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment," may obtain an extension of time for one year from the anniversary of the date of entry last preceding the passage of this act within which to pay the one-half of the installment then due or such part of any preceding installment, where payment has not been yet made and where an extension of time therefor is not authorized by the act of Congress approved March 2, 1917 (Thirty-ninth Statutes at Large, page 994), by paying interest at the rate of 5 per centum per annum on the sums to be extended from the maturity of the unpaid installments to the expiration of the period of extension, the interest to be paid to the receiver of the land office for the district in which the lands are situated, within such time as may be prescribed for that purpose by the Secretary of the Interior: *Provided,* That the one-half of any installment which becomes due within one year from the passage of this act and for which an extension of time for payment is not authorized by the said act of March 2, 1917, may also be extended for a period of one year by paying interest thereon in advance at the said rate: *Provided further,* That any payment so extended may thereafter be extended for a period of one year in like manner: *And provided further,* That if commutation proof is submitted, all the unpaid payments must be made at that time.
>
> Sec. 2. That moneys paid as interest provided for herein shall be deposited in the Treasury to the credit of the Fort Peck Indians, the same as moneys realized from the sale of the lands.
>
> Sec. 3. That the failure of an entryman to make any payment that may be due, unless the same be extended, or to make any payment extended either under the provisions hereof or under the provisions of the said act of March 2, 1917, at or before the time to which such payment has been extended, shall forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.

1. The one-half of installment payments which became due prior to December 11, 1919, which have not been paid and for which extensions of time for payments are not authorized by the act of March 2, 1917 (39 Stat. 994), Circular No. 544 (46 L. D. 75), may be extended for one year from the anniversary of the date of entry last

preceding December 11, 1919, under the act of that date, upon the payment of interest at the rate of 5 per cent per annum.

2. The one-half of installment payments, other than extended payments, which become due on the anniversary of the date of entry next occurring after December 10, 1919, for which extensions of time for payments are not authorized by the said act of March 2, 1917, may be extended for a period of one year, under the said act of December 11, 1919, upon the payment of interest in advance at the said rate.

3. The one-half of installment payments extended for one year from the anniversary of the date of entry last preceding December 11, 1919, in conformity with paragraph 1 hereof, which will become due between the dates December 11, 1919, and December 10, 1920, both dates inclusive, may, at the expiration of the period of the extension, be further extended for a period of one year, under the said act of December 11, 1919, upon the payment of interest in advance at the said rate. At the expiration of the period of such further extension, which will occur between the dates December 11, 1920, and December 10, 1921, both dates inclusive, the amount so extended must be paid.

4. The one-half of installment payments, extended for one year from the anniversary of the date of the entry next occurring after December 10, 1919, in conformity with paragraph 2 hereof, which will become due between the dates December 11, 1920, and December 10, 1921, both dates inclusive, may, at the expiration of the period of the extension, be again extended for a period of one year, under the said act of December 11, 1919, upon the payment of interest in advance at the said rate. At the expiration of the period of such further extension, which will occur between the dates December 11, 1921, and December 10, 1922, both dates inclusive, the amounts so extended must be paid.

5. Three-year proof may be submitted prior to the completion of the payments, by showing due compliance with the law in the matter of residence, cultivation, and improvements, the procedure in such case to be as stated in paragraph 7 of Circular No. 544, above cited. If commutation proof is submitted, all the unpaid amounts must be paid at that time.

6. Section 1 of the said act of December 11, 1919, provides that the interest payments required by that act shall be paid—

> within such time as may be prescribed for that purpose by the Secretary of the Interior.

and section 3 of the act provides:

> That the failure of an entryman to make any payment that may be due, unless the same be extended, or to make any payment extended either under the provisions hereof or under the provisions of said act of March 2, 1917, at or before the time to which such payment has been extended, shall forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.

7. You are directed to serve notice on all entrymen who are in default in the matter of payments, either of principal or interest, that if the required sums, as herein provided and as provided in Cir-

cular No. 544, above referred to, are not paid on or before June 1, 1920, you will report their entries to this office for cancellation.

8. Hereafter entrymen must make the required payments either of principal or interest at the time the payments become due. If such payments are not made you will serve notice on the entrymen, advising them of the defaults, and that in the event of their failure to make the payments within 30 days from receipt of notice you will report their entries to this office for cancellation.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

FORT PECK INDIAN LANDS, MONTANA, CLASSIFIED AS COAL LANDS AFTER ENTRY

DEPARTMENT OF THE INTERIOR,
Washington, June 25, 1924.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: The department has considered your letter ("A"-CGF) of the 19th instant, requesting instructions as to whether a restricted patent should issue in a case where, after entry of a tract of land in the former Fort Peck Indian Reservation and prior to the submission of final proof and payment, the land is classified as coal land.

With your letter you forwarded the papers relating to the entry, (Glasgow 033991), of Cora J. Benson, whose application was filed June 4, 1915, and allowed January 29, 1916, for NE. ¼, N. ½ SE. ¼, and E. ½ NW. ¼, sec. 5, T. 32 N., R. 50 E., M. M. (319.71 acres). Final proof was submitted July 2, 1920, and the appraised price having been later paid, final certificate issued December 7, 1923. The register noted on the final certificate:

> Patent to contain provisions, reservations, conditions, and limitations of the act of February 27, 1917, (39 Stat. 944).

The disposition of the surplus land of the former Fort Peck Indian Reservation was provided for by the act of May 30, 1908 (35 Stat. 558). Sections 4, 5, and 6 made provision for the classification and appraisement of the surplus land into four classes—agricultural, grazing, arid, and mineral, except that the mineral land was not to be appraised. Section 8 provides:

> When an entryman shall have complied with all the requirements of the homestead law and shall have submitted final proof within seven years from date of entry and shall have made all required payments aforesaid, he shall be entitled to a patent for the lands entered.

The commission provided for by the act classified all of said section 5 as grazing land, and appraised it at $3 per acre. After the approval of the report of the commission on July 18, 1912, all of said section was, on April 26, 1913, classified as noncoal, but on April 27, 1917, it was classified as coal land at $10 per acre.

Section 1 of the act of February 27, 1917, supra, to which reference was made on the final certificate issued to Miss Benson, provides:

> That in any Indian reservation heretofore or hereafter opened to settlement and entry pursuant to a classification of the surplus lands therein as mineral and nonmineral, such surplus lands not otherwise reserved or disposed of, which have been or may be withdrawn or classified as coal lands or are valuable for coal deposits, shall be subject to the same disposition as is or may be prescribed by law for the nonmineral lands in such reservation whenever proper application shall be made with a view of obtaining title to such lands, with a reservation to the United States of the coal deposits therein and of the right to prospect for, mine, and remove the same: *Provided*, That such surplus lands, prior to any disposition hereunder, shall be examined, separated into classes the same as are the nonmineral lands in such reservations, and appraised as to their value, exclusive of the coal deposits therein, under such rules and regulations as shall be prescribed by the Secretary of the Interior for that purpose.

When Miss Benson made entry and paid the first installment of the appraised price she acquired rights which can not be affected by the subsequent legislation or classification. The correct rule for the disposition of the case under consideration may be stated thus:

Entries of land in the former Fort Peck Indian Reservation allowed pursuant to the classification provided for by the act of May 30, 1908, supra, and prior to any subsequent classification of the land as valuable for coal, are not affected by the act of February 27, 1917, supra.

The final certificate issued to Miss Benson should be corrected and an unrestricted patent issued to her. The local officers may be instructed accordingly.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 76]

Circular No. 986

PAYMENTS REQUIRED FOR FORT PECK LANDS

Department of the Interior,
General Land Office,
Washington, March 24, 1925.

Registers and Receivers, Glasgow and Great Falls, Mont.

Gentlemen: The act of March 4, 1925, (43 Stat. 1267), provides:

> That all persons who have made homestead entries, being actual settlers within the boundaries of the Fort Peck Indian Reservation are hereby granted an extension of time for payment of one-half the amount, including principal and interest due and unpaid on their homestead entries until the 1st day of November, 1925, and for payment of the other half until the 1st day of November, 1926; all such amounts to bear interest until the payment dates, at 5 per centum per annum: *Provided*, That upon failure to make complete payment of either installment by any such persons the entry shall be canceled and the land revert to the status of other tribal lands of the Fort Peck Indian Reservation.
>
> Sec. 2. All such persons who have abandoned residence on and cultivation of their entries and who are in arrears in any amounts are hereby required to

make payment in full of both principal and interest on or before the 1st day of November, 1925: *Provided*, That all delinquent amounts of both principal and interest shall draw interest at the rate of 5 per centum per annum until paid: *Provided further*, That upon failure to make full and complete payment of both principal and interest on or before the 1st day of November, 1925, said entry or entries shall thereupon be canceled, and the land revert to the status of other tribal lands of the Fort Peck Indian Reservation.

1. For the information of entrymen, attention is called to the fact that beginning May 1, 1925, all business now handled by the Glasgow office will be handled by the land office at Great Falls, Mont. Until and including April 30, 1925, payments required by the act should be made to the receiver of the land office at Glasgow, and on and after May 1, 1925, they should be made to the register of the land office at Great Falls.

2. The act is construed to require the payment of interest on the principal which was due and unpaid on March 4, 1925, at the rate of 5 per cent per annum from the maturity of the unpaid amounts and for the period of the extension, and to require the payment of interest on the interest which was due and unpaid on said date at the said rate from the date of the passage of the act and for the period of the extension.

3. Section 2 of the act is construed to include persons who have submitted satisfactory proof and who have abandoned residence on and cultivation of their entries. It is further construed not to relieve any entryman from the necessity of complying with the 3-year homestead law in the matter of residence, cultivation, and improvements, proof of which compliance must be made within the time allowed for the completion of the payments.

4. An entryman who on March 4, 1925, was an actual settler on the land embraced in his entry may pay one-half of the principal which was due and unpaid on March 4, 1925, on or before November 1, 1925, and the other half on or before November 1, 1926, with interest on both halves as indicated in paragraph 2 hereof.

5. An entryman who on March 4, 1925, was not an actual settler on the land embraced in his entry is required to pay the total amount which was due and unpaid on March 4, 1925, with the required interest on or before November 1, 1925.

6. Notices showing the total amount of principal and interest heretofore paid under each entry, together with the amount of principal which was due and unpaid on March 4, 1925, and the amount of interest required, computed under both sections of the act, will be prepared in this office and sent to the local office for service by registered mail. A copy of the notice, together with a copy of this letter, should first be sent to the entryman at his record address, and if service is not obtained at that address a further notice should be directed to the entryman at the post office nearest the land. This office will use the utmost care in preparing these notices in order that they may correctly show the amounts due, but before final certificate is issued the local officers will check the amount shown in the notice with the local office records in order to verify the figures given.

7. One who claims the right to make payment under section 1 of the act as an actual settler, must show by affidavit, corroborated by the affidavits of two persons, the facts relative to his settlement. The affidavit must show whether on March 4, 1925, he was actually re-

siding upon the land embraced in his entry, and whether on that date he had his home upon the land to the exclusion of a home elsewhere.

8. The provisions in the act that upon the failure of an entryman to complete his payments as required the entry shall be canceled and the land revert to the status of other tribal lands of the Fort Peck Indian Reservation will be strictly observed, and entries for which payments are not made as required will be canceled without notice to the entrymen other than the notice advising them of the amounts due.

9. Upon payment being made, the local officers will so report to this office and if payment is not made they will so report as soon as possible after November 1, 1925. Where payment is made under section 1 of the act, the local officers will make further report upon the completion of the payments and if payments are not made as required they will so report as soon as possible after November 1, 1926.

10. Where payments are made as required, where satisfactory proof of residence, cultivation, and improvements has been submitted, and in the absence of objection shown by the local office records, the register will issue final certificate without special instructions from this office.

11. The act is supplemental to the acts of March 2, 1917 (39 Stat. 994), and December 11, 1919 (41 Stat. 365). See Circulars Nos. 544 (46 L. D. 75), and 667 (47 L. D. 335). Payments maturing after March 4, 1925, must be made as indicated in Circular No. 544.

12. Any entryman may, if he so desires, file a relinquishment of a portion of his entry and apply to have the money heretofore paid applied on the part retained. (46 L. D. 282.)

Very respectfully,

William Spry, *Commissioner*.

Approved March 24, 1925.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 498]

Circular No. 1081

PAYMENTS REQUIRED FOR FORT PECK LANDS

Department of the Interior,
General Land Office,
Washington, *July 20*, *1926*.

Register, *Great Falls*, *Mont.*

Sir: The act of June 15, 1926, (44 Stat. 746), provides:

> That any entryman on the former Fort Peck Indian Reservation, or his successors or transferees, who is unable to make payment as required by the act of March 4, 1925 (Forty-third Statutes, page 1267), may obtain an extension of time for the payment of the total amount of prinicpal and interest required by that act for one year from the date when such sum became or shall become due under the provisions of said act, upon the payment of interest on the total amount involved at the rate of 5 per centum per annum: *Provided*, That the claimant shows to the satisfaction of the Commissioner of the General Land

Office by affidavit corroborated by the affidavits of at least two persons, the fact of and the reason for his inability to make the payment: *Provided further,* That such claimant for the same reason and upon making payment of like interest and furnishing a like affidavit may obtain an additional extension of one year, but no more, for the payment of any amount so extended.

SEC. 2. Upon failure of any person to make complete payment of the required amount within the period of any extension granted in accordance with the provisions of this act, the homestead entry of such person shall be canceled and the lands shall revert to the status of other tribal lands of the Fort Peck Indian Reservation.

1. Under the provisions of this act any entryman on the Fort Peck Reservation or his successors or transferees who has not paid the amount due and required to be paid on November 1, 1925, by the act of March 4, 1925, (43 Stat. 1267), may obtain an extension of time for one year for payment of the total amount due both of principal and interest on filing in your office on or before November 1, 1926, an affidavit, corroborated by the affidavits of two persons satisfactorily showing that he is unable to make the required payment and accompanied by the payment of interest at the rate of 5 per cent per annum on the amount sought to be extended.

2. At the expiration of the first extension granted by the act an additional extension of one year may be allowed on a like showing of inability to pay the amount due if accompanied by the required interest.

3. In the case of the half payment allowed to be made November 1, 1925, under section 1 of the act of March 4, 1925, the entryman, if such payment has not been made, will be allowed an extension until November 1, 1926, within which to pay the amount due on the payment of interest in advance on or before November 1, 1926, at the rate of 5 per cent per annum on the total amount due November 1, 1925, provided a corroborated affidavit, as described above, is filed and found satisfactory. If at the expiration of the extension period entryman is still unable to pay the amount required, he may obtain a further extension until November 1, 1927, upon filing a similar affidavit and paying a like amount of interest.

4. In the case of the half payment allowed to be made November 1, 1926, under section 1 of the act of March 4, 1925, the entryman, if unable to make such payment, will be allowed an extension until November 1, 1927, within which to pay the amount due, on the payment in advance on or before November 1, 1926, of interest at the rate of 5 per cent per annum on the total amount due November 1, 1926, provided a corroborated affidavit, as described above, is filed and found satisfactory. If at the expiration of the extension period entryman is still unable to pay the amount required, he may obtain a further extension until November 1, 1928, upon filing a similar affidavit and paying a like amount of interest.

5. Where relief is sought by persons falling under section 2 of the act of March 4, 1925, who were required to pay on November 1, 1925, the entire amount of principal and interest due, an extension will be granted to November 1, 1926, on the payment of interest in advance on or before November 1, 1926, at the rate of 5 per cent per annum on the total amount due and the filing of an affidavit, as described above, with the privilege of a further extension of one year to Novem-

ber 1, 1927, on the payment of the same amount of interest and the filing of a like affidavit.

6. A copy of each affidavit asking for the extension allowed by this act to those unable to pay the amounts due under the act of March 4, 1925, must be sent by the applicant by registered letter to the superintendent of the Fort Peck Indian Reservation, Poplar, Mont., and the registry receipt must be filed in your office, together with an affidavit that such a notice was mailed. The Indian superintendent should promptly mail to this office any objection, and the reason therefor, entertained by him against the allowance of any extension requested.

7. The provision in section 2 of the act that the failure of any person to make complete payment of the required amount for the period of any extension granted in accordance with the provisions of the act shall result in the cancellation of his entry and the reversion of the land to the status of other tribal lands of the Fort Peck Indian Reservation will be strictly observed. Entries for which payments are not made as required will be canceled without further notice to the parties in interest other than the notice advising them of the amounts due.

8. On each entry on which payment has not been made as required by the act of March 4, 1925, a notice showing the total amount due on November 1, 1925, under the said act and the amount of interest required to extend the time for payment until November 1, 1926, will be prepared in this office and sent to your office for service by registered mail. A copy of the notice, together with a copy of this letter, should first be sent to the entryman at his record address and if service is not obtained at that address, a further notice should be directed to the entryman at the post office nearest the land.

9. Where the required interest is paid and the affidavit filed, you will transmit the affidavit to this office with a statement of the interest received, which you will hold in your unearned account until advised of the acceptance of the affidavit.

10. Where full payment has been made and satisfactory proof as to residence, cultivation, and improvements has been submitted, you will issue final certificate in the absence of objections shown by your records without special instructions from this office.

11. The act is supplemental to the acts of March 2, 1917 (39 Stat. 994), December 11, 1919 (41 Stat. 365), and March 4, 1925 (43 Stat. 1267). See Circulars Nos. 544 (46 L. D. 75); 667 (47 L. D. 335); and 986 (51 L. D. 76). Payments maturing after March 4, 1925, must be paid as indicated in Circular No. 544.

12. Any entryman may if he so desires file a relinquishment of a portion of his entry and apply to have the money heretofore paid applied on the part retained. (46 L. D. 282.)

Very respectfully,

William Spry, *Commissioner.*

Approved July 20, 1926.

E. C. Finney,
First Assistant Secretary.

REAPPRAISEMENT OF FORT PECK INDIAN LANDS, MONTANA

Department of the Interior,
Office of Indian Affairs,
Washington, April 20, 1927.

The honorable the Secretary of the Interior.

Sir: There is submitted herewith certain correspondence relating to the reclassification and reappraisement of lands on the Fort Peck Indian Reservation, Mont., opened to homestead entry. Included with the papers is a report submitted by Inspector Samuel Blair, dated March 30, 1926, wherein he recommends that no further reappraisements and reductions be made.

* * * * * * *

Considering the long period that has passed since the original appraisements were made, and the continued filing of applications for reappraisement, it is the opinion of this office that action should be taken to bring the matter definitely to an end. It is believed that ample authority is vested in the Secretary of the Interior, under the act above cited, to set a definite date after which no further applications for reappraisement will be considered. It is also believed that if the action proposed is taken it will result in settling the conditon of unrest and dissatisfaction that now prevails among many of the settlers on the reservation.

It is therefore recommended that no further applications for reappraisement involving Fort Peck lands be considered unless filed in the local land office on or before July 31, 1927. It is also recommended that in those cases where action has once been taken on an application for reappraisement, that no appeal or supplemental application for reappraisement be considered.

If these recommendations are approved a copy of this letter will be furnished the superintendent of the Fort Peck Agency with instructions to give the matter all possible publicity among the residents of the reservation. A copy will also be furnished the Commissioner of the General Land Office with request that the local land office be notified to give the matter publicity through the local press as a matter of news and without expense to the Government.

Respectfully,

Chas. H. Burke, *Commissioner.*

Approved June 21, 1927.

John H. Edwards,
Assistant Secretary.

OIL AND GAS DEPOSITS RESERVED IN CERTAIN ENTRIES OF FORT PECK INDIAN LANDS, MONTANA

Department of the Interior,
General Land Office,
Washington, January 18, 1929.

Register, *Great Falls, Mont.*

Sir: Reference is had to your letter of December 19, 1928, stating that you have never received a circular of instructions requiring that all homestead entries embracing Fort Peck Indian lands be made subject to the provisions of the act of March 3, 1927 (44 Stat. 1401).

The said act provides in part:

> That the act of May 30, 1908, (Thirty-fifth Statutes, page 558), providing for the allotment, sale, and disposal of lands on the Fort Peck Indian Reservation, Montana, is hereby amended by specifically reserving to the Indians having tribal rights on said reservation the oil and gas in the tribal lands undisposed of on the date of the approval of this Act, and leases covering such land for oil and gas, may be made by the Indians of the Fort Peck Reservation through their tribal council with the approval of the Secretary of the Interior and under such rules and regulations as he may prescribe.

In the future in all applications for homestead entries of Fort Peck lands or applications for reinstatement of canceled entries of such lands, you will require the applicant to file a consent to the reservation of the oil and gas to the Fort Peck Indians in accordance with the provisions of said act.

You will serve notice on Chris W. Enghusen of office letter of December 14, 1928, and in due time submit report.

Very respectfully,

William Spry, *Commissioner.*

UNDISPOSED OF LANDS IN KIOWA, COMANCHE, AND APACHE INDIAN RESERVATIONS

Department of the Interior,
General Land Office,
Washington, April 29, 1911.

Register and Receiver, *Lawton, Okla.*

Sirs: I have to advise you that section 16 of the act of March 3, 1911 (36 Stat. 1069), contains the following provision:

> That the Secretary of the Interior, in his discretion, is authorized to sell, upon such terms and under such rules and regulations as he may prescribe, the unused, unallotted and unreserved lands of the United States in the Kiowa, Comanche and Apache Reservations.

In view thereof you will not allow any more entries of land on said reservations until further advised, and you will at once prepare a list of the unappropriated lands in your district in that part of the Kiowa, Comanche, and Apache Reservations, opened to homestead entry under the act of June 6, 1900 (31 Stat. 672), and in the Fort Sill Wood Reserve. The unentered lands in the pasture reserves are to be allotted pro rata to each child of Indian parentage born since June 5, 1906, in accordance with the act of June 25, 1910 (36 Stat. 861).

You will prepare a list of vacant lands at as early a date as practicable. This legislation will not affect the disposal of the lands in the Wichita National Forest recently restored to settlement and entry at a date fixed in the notice restoring the same.

Very respectfully,

S. V. Proudfit,
Assistant Commissioner.

[Reported, 47 L. D. 118]

CIRCULAR No. 639

INSTRUCTIONS RELATING TO CONTESTS INVOLVING PASTURE AND WOOD RESERVE LANDS WITHIN FORMER KIOWA, COMANCHE, AND APACHE INDIAN RESERVATIONS, OKLA., AND AS TO PROCEEDINGS TO BE FOLLOWED WHERE REQUIRED PAYMENTS ARE NOT MADE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 8, 1919.

REGISTER AND RECEIVER, *Guthrie, Okla.*

SIRS: The act of Congress approved March 3, 1919 (40 Stat. 1318), entitled "An act to authorize the contesting and cancellation of certain homestead entries, and for other purposes," provides:

> That the homestead entries made for pasture and wood reserve lands in the Kiowa, Comanche, and Apache Reservations, in the State of Oklahoma, opened to settlement and entry upon sealed bids, as authorized by the Act of June fifth, nineteen hundred and six (Thirty-fourth United States Statutes at Large, page two hundred and thirteen), be, and the same are hereby, made subject to contest, upon charges alleging that the entryman never established residence upon the land, or that having established such residence he failed to maintain same, or to improve and cultivate the land in accordance with law; and upon proof sustaining such charges, submitted in accordance with the rules of practice, the entries will be canceled and the money paid by the entrymen in default will be forfeited: *Provided*, That any person who has been residing upon the land for at least two years prior to the cancellation of such entry, and if there be no such settler, then the successful contestant, shall, if qualified to make a homestead entry, have a preference right for a period of sixty days from notice, to make a homestead entry for the land, paying therefor the price bid by the original entryman, or a price to be fixed by appraisement upon the applicant's request, the improvements made by such settler not to be taken into consideration in making such appraisement: *Provided, further*, That should there be two settlers on a tract, the land will be partitioned to them upon mutual agreement, or will be sold to the settler submitting the highest bid at a public offering: *And provided further*, That payment for the land shall be made in four equal installments, one installment at the date of entry, and the other installments in one, two and three years thereafter: *And provided further*, That failure to comply with the homestead law or to make the annual payment when due in the case of any entry under this Act shall be a sufficient cause for the cancellation of the entry and the forfeiture of the money paid: *And provided further*, That any vacant lands in the wood and pasture reserves in said Indian reservations, opened to entry under said Act of June fifth, nineteen hundred and six, for which no preference right of entry exists, as herein provided, or under the Act of June twenty-eighth, nineteen hundred and six (Thirty-fourth Statutes at Large, page five hundred and fifty), shall be subject to sale at public auction to the highest bidder under rules and regulations to be provided by the Secretary of the Interior: *And provided further*, That the moneys received from the sale of the lands under this Act shall be deposited in the Treasury of the United States, shall draw interest, and be administered in accordance with the provisions of section two of said Act of June fifth, nineteen hundred and six."

In addition to the cancellation of homestead entries, upon contests, authorized by the said act, they may be canceled upon proceedings instituted by the Government for failure of the entrymen to submit proof and make payment by the 1919 anniversaries of the dates thereof. See departmental instructions of September 3, 1914. (43 L. D. 376.)

In acting upon contests, and in serving notice of default to entrymen who fail to submit proof and make payment within the prescribed period, you will be governed by the following regulations:

ACTION TO BE TAKEN ON CONTESTS

1. *When hearing may be ordered.*—A hearing may be ordered on an application to contest an entry at any time before, but not after, you have reported the entry to this office for cancellation for failure of the entryman to submit proof and make payment within the prescribed period.

2. *Sworn statement required of contestant.*—A contestant will be required to furnish with his application to contest or at least before a hearing is ordered thereon, a statement sworn to by himself and corroborated by the affidavits of at least two persons showing whether the land is or is not settled upon by a settler or settlers other than himself, and if such sworn statement shows that the land is settled upon by a settler or settlers other than himself, the names and addresses of each such settler and the period during which each of them has been residing upon the land, if that information is known.

3. *Sworn statement required of settler.*—If an application to contest is allowed, and if the affidavits furnished by the contestant show that there is a settler or settlers upon the land other than himself, you will promptly advise such settler or settlers of the pending contest, furnish each of them with a copy of these instructions, and notify each that if he contemplates basing any rights of entry on a preference right under the said act of March 3, 1919, he shall, within 30 days from notice, furnish a statement under oath, corroborated by two witnesses, showing the time his settlement commenced and the acts constituting such settlement. Failure to furnish such statement will be construed as a waiver on the part of such settler of any claims under this act, provided that a settler not named by the contestant may file such statement at any time prior to the cancellation of the original entry.

4. *Method of determining person entitled to preference right where there is but one settler—When rights may be exercised.*—Upon the cancellation of the homestead entry as the result of said contest proceedings, and where it appears that a settler has been residing upon the land for at least two years prior to the cancellation of such entry, and where it further appears that such residence was initiated prior to the filing of the aforesaid contest affidavit, you will, by registered mail, notify him that he will be allowed 60 days, after receipt of notice, within which to file in your office sworn statements in duplicate and duly corroborated, showing that he is entitled to the preference right under said act to enter said premises under the homestead law, together with his application to enter said land under said law (based upon such preference right), showing his qualifications to make homestead entry thereof. Such showing shall, on the filing of the homestead application referred to, be deemed to be and considered and treated as a part thereof. Upon the timely filing of said homestead application, accompanied by said sworn statement, you will receive and suspend the same, and at once notify the successful contestant, by registered mail, of the filing of said homestead

application and accompanying papers, and advise him that he will be allowed 30 days from date of receipt of such notice within which to show cause why the homestead application should not be allowed. Upon the expiration of the said 30 days, and in the absence of protest against the application on the part of the successful contestant, you may, if all else be regular, allow the homestead entry of the settler. If, however, the successful contestant timely protests the allowance of the aforesaid application to make homestead entry and applies for a hearing to contest the right of said applicant to enter said premises in the exercise of his preference right mentioned and referred to in said act, a hearing shall be ordered and held by you as in other cases.

5. *Partition of land between or sale to two or more settlers.*—Should there be two or more settlers upon the land, each claiming to be entitled to a preference right of entry under said act of March 3, 1919, the land will, upon proof of such claim and all else being regular, be partitioned to them upon mutual agreement, or will be sold to the settler submitting the highest bid at public offering in conformity with said act. If such settlers desire to partition the land beween them, they must do so within the 60-day period. Or, if they desire to have the land sold, it may be offered for sale to them by you at your office at any time within the said 60-day period, but you will not accept any bid which is less than the price at which the land formerly sold. Except in case of protest filed by the successful contestant, entry must be made within the 60-day period, regardless of whether the land is partitioned between the settlers or sold to the one submitting the highest bid therefor.

6. *Method of determining person or persons entitled to preference right where there is more than one settler—When right may be exercised.*—Where the settlers mutually agree to partition the land between them and seasonably apply to make homestead entry thereof based upon such agreement and their claim to preference right, you will, where the original homestead entry has been canceled as the result of contest proceedings brought by a person other than one of said settlers, receive and suspend said homestead applications, notify the said successful contestant by registered mail of the filing of said partition agreement and of said homestead applications, and allow him 30 days from date of receipt of such notice within which to show cause why the aforesaid homestead applications should not be allowed. Copies of said partition agreement should be filed in your office by the homestead applicants along with their said homestead applications, and one of such copies should be by you transmitted to said successful contestant along with the notice hereinabove mentioned. Upon the expiration of said 30 days, and in the absence of protest against the allowance of said applications, you may, if all else be regular, allow the same. If, however, the successful contestant timely protests the allowance of the aforesaid applications and applies for a hearing to contest the right of said parties under said premises, a hearing shall be ordered and held by you as in other cases.

Where it is seasonably made to appear that the settlers are unable to arrive at any partition agreement and one of such settlers seeks to have the land sold to one of them at a public offering as provided for in the second proviso to said act, and to enter the premises under the homestead law at the price fixed at said sale, and where it further appears that the original homestead entry has been canceled as a result of contest proceedings brought by a contestant other than one of said settlers, you may proceed with the sale as hereinbefore authorized, sell the land to the settler submitting the highest bid therefor at the public offering, receive and suspend the homestead application based thereon, and notify the successful contestant that he will be allowed 30 days from and after date of receipt of notice in which to show why the homestead application of the successful purchaser should not be allowed. Upon the expiration of said 30 days, in the absence of objections upon the part of the successful contestant, you may, if all else be regular, award the land to the settler submitting the highest bid therefor at a public offering, and allow his homestead application to proceed to entry. If, however, the successful contestant timely protests the allowance of the aforesaid application to make homestead entry and sale, and applies for a hearing to contest the right of said applicant and bidder to enter said premises, a hearing shall be ordered and held by you as in other cases.

If, within said 60-day period the settlers do not mutually agree to partition said premises, or, if, during said period either of them shall fail to request that the land be put up for sale at public auction, you will advise the successful contestant that he will be allowed 30 days from date of receipt of notice within which to enter said premises in the exercise of his right as a successful contestant.

7. *Fees, commissions and purchase money required.*—A settler or a successful contestant must accompany his application to enter with the usual homestead fee and commissions, and, unless he files an application for appraisement, he must also accompany his application to enter with one-fourth of the price bid for the land by the original entryman. If he files an application for appraisement, he will be required to accompany his application to enter with only the usual homestead fee and commissions, pending action on the application for appraisement and after appraisement he will be allowed 30 days from receipt of notice within which to pay one-fourth of the purchase money.

8. *Sale of vacant lands.*—The sale authorized by the said act of March 3, 1919, of vacant lands for which no preference right of entry exists, will be made the subject of future instructions.

ACTION TO BE TAKEN ON ENTRIES WHERE PROOF AND PAYMENT ARE NOT MADE WITHIN PRESCRIBED PERIOD

1. *Notice to be served on entryman in default.*—In each case where proof and payment are not made by the 1919 anniversary of the date of entry, either under an entry allowed under the act of June 5, 1906 (34 Stat. 213), or under the act of June 28, 1906 (34 Stat. 550), you will serve notice on the entryman advising him of the default and that the entry will be promptly reported by you to this office for cancellation for such failure if proof is not submitted and if all sums due, both of principal and interest, are not fully paid on or before the expiration of six months from the date said entry became in default.

2. *Issuance of final certificate after expiration of statutory period.*—Where proof and payment are made after the statutory period has expired but within the said six months, you will, in the absence of further objection, issue final certificate under the entry, accompanying the same with a memorandum showing the facts. If all else be found regular in this office the case will then be submitted for confirmation to the board of equitable adjudication.

3. *Entries to be reported for cancellation.*—Where proof and payment are not made within the statutory period or within the said six months, you will at once make report transmitting evidence of service of notice, whereupon such further action will be taken by this office as the circumstances warrant.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary

CIRCULAR NO. 971

REGULATIONS FOR THE SALE OF KIOWA, COMANCHE, AND APACHE INDIAN LANDS

DEPARTMENT OF THE INTERIOR,
Washington, December 20, 1924.

The honorable the
COMMISSIONER OF THE GENERAL LAND OFFICE.

MY DEAR MR. COMMISSIONER: You are directed to cause to be sold for cash at not less than $1.25 per acre at public auction at the city of Lawton, in the State of Oklahoma, beginning on March 26, 1925, the unused, unallotted, unreserved lands and such portions of the school and agency lands as are no longer needed for administration purposes in the former Kiowa, Comanche, Apache, and Wichita Indian Reservations, in the State of Oklahoma under the acts of Congress, approved June 30, 1913 (38 Stat. 92), and March 3, 1919 (40 Stat. 1318).

2. *Lands to be offered.*—The lands for sale are listed below under the acts under which they will be sold. All the lands have been examined by the Geological Survey and a separate list is given under each act showing those which have been found to have a possible value for oil and gas deposits and which will be sold with a reservation of those deposits to the United States under the act of July 17, 1914 (38 Stat. 509). They will be offered for sale in accordance with the groupings given, but in case of the reoffering of any tract under rule 6, the officer in charge of the sale may in his discretion modify the groupings of the tracts.

(List of lands omitted.)

3. *Qualifications and restrictions.*—Purchasers are not required to show any qualifications as to age, citizenship, or otherwise, or to reside upon, improve, or cultivate lands sold to them.

4. *Bids by agents, etc.*—Bids and payments may be made either through agents or in person, but no bid of less than $1.25 per acre will be received. Bids will not be considered if made through the mail or at any time or place other than the time and place at which said tracts are offered for sale.

5. *Payments and forfeitures.*—All successful bidders to whom tracts are awarded must, on or before 4 o'clock, p. m., on the day on which awards are made to them, pay one-fourth of the total amount bid by them for such tracts, the balance to be paid in four equal, annual installments with interest at 4 per cent per annum on deferred payments. Any bidder who fails to make payment of one-fourth of the amount of his bid within the time required, will not thereafter be permitted to pay for the tract or bid on any other tracts. Any purchaser at the sale who fails to pay the annual installments, with interest at 4 per cent per annum, when due, will forfeit the amount already paid and such failure will be a sufficient cause for cancellation of his purchase.

6. *Lands reoffered.*—All tracts awarded to persons who fail to make payment therefor, and all tracts which shall not be sold when first offered, will be reoffered for sale after all of said lands have been once offered, or at any time during the sale when the officer in charge thinks best.

7. Combinations in restraint of the sale are forbidden by section 2375 of the United States Revised Statutes, which reads as follows:

> Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the lands so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders or prevents, or attempts to hinder or prevent any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

8. *Suspension or postponement of sale.*—If at any time it becomes evident that there is a combination among bidders or any other cause which effectually suppresses competition, or if for any other cause it shall seem advisable, the officer in charge may suspend the sale temporarily or postpone it indefinitely, and if in his judgment the highest bid offered for any tract is below its reasonable cash value, he may reject all bids and reoffer the tract for sale as herein provided.

9. *Disposition of proceeds.*—The proceeds received from the lands sold under the act of June 30, 1913 (38 Stat. 92), will be deposited in the United States Treasury to the credit of the Kiowa Agency Hospital fund. The amounts received from the lands sold under the act of March 3, 1919 (40 Stat. 1318), will be deposited in the United States Treasury to the credit of the Kiowa, Comanche, and Apache Indians.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

[Reported, 43 L. D. 280]

CIRCULAR NO. 332

FORT BERTHOLD,[8] ROSEBUD, AND PINE RIDGE LANDS—TIME OF PAYMENTS EXTENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 17, 1914.

Registers and Receivers, United States Land Offices, Minot, N. Dak., and Gregory, S. Dak.

SIRS: 1. Your attention is directed to section 1 of the act of Congress, approved May 28, 1914 (38 Stat. 383), which reads as follows:

> That the Secretary of the Interior is hereby authorized to extend for a period of one year the time for the payment of any annual installment due, or hereafter to become due, on the purchase price for lands sold under the act of Congress approved June 1, 1910, entitled "An act to authorize the survey and allotment of lands embraced within the limits of the Fort Berthold Reservation in the State of North Dakota, and the sale and disposition of a portion of the surplus lands after allotment, and making appropriation and provision to carry the same into effect," the act of Congress approved May 27, 1910, entitled, "An act to authorize the sale and disposition of the surplus and unalloted lands in Bennett County in the Pine Ridge Indian Reservation, in the State of South Dakota, and making appropriation to carry the same into effect," and the act approved May 30, 1910, entitled "An act to authorize the sale and disposition of a portion of the surplus and unallotted lands in Mellette and Washabaugh Counties in the Rosebud Indian Reservation in the State of South Dakota, and making appropriation and provision to carry the same into effect," and any payment so extended may annually thereafter be extended for a period of one year in the same manner: *Provided*, That the last payment and all other payments must be made within a period not exceeding one year after the last payment becomes due, by the terms of the act under which the entry was made: *Provided further*, That any and all payments must be made when due, unless the entryman applies for an extension and pays interest for one year in advance at 5 per centum per annum upon the amount due as herein provided, and patent shall be withheld until full and final payment of the purchase price is made in accordance with the provisions hereof: *And provided further*, That failure to make any payment that may be due, unless the same be extended, or to make any extended payment at or before the time to which such payment has been extended, as herein provided, shall forfeit the entry and the same shall be canceled, and any and all payments theretofore made shall be forfeited.

2. Said section applies to entries made after the passage of the act as well as to those theretofore made; the time for the payment of any installment which is due, or is about to become due, will be extended for one year, provided the applicant pays 5 per cent on the amount as interest for the year after its original maturity. Further extensions may be obtained on the same conditions, from year to year, but no installment can be postponed beyond seven years from the date of the entry in question. Payment of interest on installments, now due and unpaid, must be made at once, in order to secure the extension, and such payments must hereafter be made at or before the maturity of the installments to be extended.

3. There need be no formal application for extension, but making the required payment will be sufficient. The receiver will note upon the receipts and on the abstracts of collections the nature and purpose of the payments.

4. Three-year proofs may be submitted when the necessary showing can be made, and the payments be postponed until their maturity

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[8] See Circular No. 944, p. 703.

under the act opening the land to entry or under this act; final certificate and patent will not issue on any entry until full payment has been made.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

A. A. JONES,
First Assistant Secretary.

WITHDRAWAL OF SHOSHONE OR WIND RIVER INDIAN LANDS, WYO.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 23, 1911.

REGISTER AND RECEIVER,
Lander, Wyo.

SIRS: Your attention is called to the act of March 3, 1905 (33 Stat. 1016), under which the lands formerly within the Shoshone or Wind River Reservation became subject to entry on August 15, 1906. The unreserved, nonmineral, and noncoal lands which have not been entered under that act prior to August 15, 1911, will become subject to sale at public auction, and you are therefore directed not to allow entries for any of said lands after that date.

* * * * * * *

Very respectfully,

FRED DENNETT, *Commissioner.*

REAPPRAISEMENT OF SPOKANE INDIAN LANDS

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 29, 1927.

Mr. HARVEY K. MEYER,
Superintendent Colville Agency.

MY DEAR MR. MEYER: Reference is made to office letter of August 19, 1927, inclosing a copy of letter of this office dated August 11, 1927, approved by the department August 16, 1927, relating to the reclassification and reappraisement of lands on the Spokane and other Indian reservations opened to homestead entry.

In connection therewith this will advise that the General Land Office has invited our attention to the fact that it has been the policy of that office not to recognize any application of this nature where the price of the lands has been fixed by the opening act. As the price of the lands of the Spokane Reservation were fixed by the act of May 29, 1908 (35 Stat. 458), you are hereby requested to disregard the instructions contained in office letter of August 19, 1927. Please acknowledge receipt hereof.

Very truly yours,

E. B. MERITT,
Assistant Commissioner.

WITHDRAWAL OF UINTAH INDIAN LANDS, UTAH

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 26, 1910.

Register and Receiver, Vernal, Utah.

GENTLEMEN: I am in receipt of your letter of July 12, 1910, in which you ask, with reference to lands in the former Uintah Indian Reservation, in Utah.

(1) Whether the instructions sent you on June 29, 1910, directing you not to allow entries for lands within this reservation which remain unentered after August 27, 1910, apply to townsites on the reservation and that no private sales of lots within these townsites are to be made after that date.

(2) Whether successful contestants will be allowed to enter lands embraced in entries where the cancellation is secured after August 27, 1910.

(3) Whether persons who hereafter initiate contests against homestead entries will be allowed a preference right of entry when they secure their cancellation.

The act of March 3, 1905 (33 Stat. 1069), provides with reference to the undisposed of lands:

> That all lands opened to settlement and entry under this Act remaining undisposed of at the expiration of five years from the taking effect of this Act shall be sold and disposed of for cash, under rules and regulations to be prescribed by the Secretary of the Interior, not more than six hundred and forty acres to any one person.

The lots in the townsites of Duchesne, Myton, and Randlett were not opened to settlement and entry under the act of March 3, 1905, but were reserved under section 2380 United States Revised Statutes, and disposed of under section 2381 United States Revised Statutes. The undisposed of lots in these townsites will remain subject to private sale at their appraised valuation after August 27, 1910.

The lands to which no valid existing rights have attached under any of the public land laws on August 28, 1910, and such lands only, are to be disposed of at the sale which is to be conducted on November 1, 1910. The lands which are embraced within an unperfected homestead entry on August 28, 1910 will not be sold. Where a preference right of entry is running on August 28, 1910, the successful contestant will be allowed to exercise his preference right of entry after that date and within the preference right period. The rules of practice relating to contests and other regulations applicable to entries under the homestead laws will continue in force as to homestead entries made on the reservation prior to August 28, 1910, until all lands which are embraced in such entries have been patented.

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Respectfully,

S. V. PROUDFIT,
Acting Commissioner.

[Reported, 31 L. D. 392]

INSTRUCTIONS RELATIVE TO SALE OF UMATILLA INDIAN RESERVATION LANDS, OREGON

Department of the Interior,
General Land Office,
Washington, D. C., July 29, 1902.

Register and Receiver, *La Grande, Oreg.*

Gentlemen: I inclose herewith a printed copy of the act of Congress approved July 1, 1902 (32 Stat. 730), providing for the sale of the unsold portion of the Umatilla Indian Reservation.

The law directs that the lands which were not sold at the public sale of said lands heretofore held, at the price for which they had been appraised, under the provisions of the act of March 3, 1885 (23 Stats. 340), shall be sold at private sale at not less than the appraised value thereof, and in conformity with the provisions of said act, thereby changing the former law only as to the manner of disposal of said lands, and giving a preference right to bona fide settlers thereon who have, prior to July 1, 1902, settled and made substantial improvements upon any of said lands with the intent of permanently residing upon the same as a homestead, to purchase the lands so settled upon at any time within 90 days after that date.

The amount that any applicant may purchase is still limited to 160 acres of untimbered lands and an additional 40 acres of timbered lands; and no person will be permitted to purchase timbered lands unless he is also the purchaser of untimbered lands.

The terms of payment will be the same as under former sales, viz: For untimbered lands, one-third at the time of purchase, one-third in one year, and one-third in two years from date of sale, with interest on the deferred payments at the rate of 5 per cent per annum. At the time of making the second payment, one year's interest on the third payment must also be collected. Full payment must be made for timbered lands at the date of purchase.

In cases of particular tracts on which improvements were situated and appraised, such appraised valuation is in addition to the price of the land, and must be paid in full at the time of the purchase. In any such cases there will be inserted in the prescribed form for receipt the words "and the improvements thereon valued at $——," giving the amount of appraisement.

Each purchaser will be required to make affidavit that he is purchasing said lands for his own use and occupation, and not for, or on account of, or at the solicitation of, any other person; that there is no other party having a superior right as a prior settler thereon; that he has made no contract whereby the title thereto shall, directly or indirectly, inure to the benefit of another. And if any conveyance or contract is made touching the same, or any lien thereon created before the issuing of the patent, such conveyance, contract, or lien shall be absolutely null and void.

No patents will be issued for untimbered lands until the purchaser shall have made all the payments, and also satisfactory proof that he has resided on the land purchased at least one year and reduced at least 25 acres to cultivation. A purchaser desiring to make proof of residence and cultivation of the land under this act will be required to file with the register a written notice of his intention to do so, in the manner prescribed under the homestead laws, and the register will thereafter cause such notice to be duly posted and published.

The proof, which must consist of the testimony of two witnesses and the claimant, accompanied by his final affidavit, must be made before the register or receiver, and the homestead proof forms will be used, modified when necessary.

For the payments made the receiver will issue his receipt in duplicate, to be numbered consecutively in the order of their issue in the existing Umatilla Indian land series, the duplicate to be delivered to the purchaser and the original to be sent to this office with a corresponding abstract.

In the event of the failure of any purchaser to make any payment when the same becomes due, the Secretary of the Interior shall cause said land to be again offered at private sale, after notice to the delinquent; and if said land shall sell for more than the balance due thereon, the surplus, after deducting expenses, shall be paid over to the first purchaser.

In compliance with the provisions of said law, conferring upon bona fide settlers upon any of said lands, with the intent of permanently residing upon the same as a homestead, a preference right to buy the land so settled upon, any settler will be permitted to exercise said right to purchase the tract, settled upon by him prior to July 1, 1902, at any time within 90 days thereafter, upon his making affidavit, duly corroborated by two witnesses, setting forth the date of his settlement, a statement specifically describing the improvements owned by him and their value, and that he so settled upon and improved said lands with the intent of permanently residing on the same as a homestead, but he will also be required to file the same affidavit prescribed for others; and he may, if he has resided upon and cultivated such lands for the required period, at any time thereafter submit proof thereof in the manner hereinbefore prescribed.

As the right to purchase timber lands is dependent upon the purchase of untimbered lands, no certificate will be issued to the purchaser of timbered lands until full payment and proof have been made on the untimbered land purchased by the party, when, if the proof of compliance with the requirements of the law is satisfactory, the register will issue his certificate for the entire area purchased, numbering such certificates consecutively.

The forms for affidavits, receipts, and certificates heretofore used in connection with the public sale of the Umatilla Indian lands will be used, modifying the same as may be necessary for compliance herewith.

Notice of the sale has been sent to the Journal, La Grande, Oreg., and the Tribune, Pendleton, Oreg., for publication, the date upon which the sale is to commence being fixed for September 15, 1902.

Very respectfully,

Binger Hermann, *Commissioner.*

Approved.

Thos. Ryan, *Acting Secretary*

(Act omitted.)

[Reported, 46 L. D. 59]

CIRCULAR NO. 536

UMATILLA INDIAN LANDS—ACT OF FEBRUARY 17, 1917—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 20, 1917.

REGISTER AND RECEIVER,
United States Land Office, La Grande, Oreg.

SIRS: Your attention is directed to the act of February 17, 1917 (39 Stat 923), which reads as follows:

> That all persons who have heretofore purchased or may hereafter purchase any of the lands of the Umatilla Indian Reservation in the State of Oregon, and have made or shall make full and final payment therefor in conformity with the acts of Congress of March third, eighteen hundred and eighty-five, and of July first, nineteen hundred and two, and subsequent acts respecting the sale of said lands, shall be entitled to receive patents therefor upon submitting satisfactory proof to the Secretary of the Interior that the untimbered lands so purchased are not susceptible of cultivation or residence and are exclusively grazing lands, incapable of any profitable use other than for grazing purposes.
>
> SEC. 2. That where a party entitled to claim the benefits of this act dies before securing a patent therefor it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to make the necessary proofs and payments therefor to complete the same; and the patent in such cases shall be made in favor of the heirs of the deceased purchaser, and the title to said lands shall inure to such heirs as if their names had been especially mentioned.

1. This act is identical in its terms with that of February 11, 1913 (37 Stat. 665), except that its provisions are now extended to all entries heretofore or hereafter made. Proofs may be submitted only after publication and posting of notice, as in ordinary homestead cases. If the regularly introduced testimony shows that a tract is not susceptible of cultivation or residence and is exclusively grazing land, incapable of any profitable use other than for grazing purposes, the entryman is, by the act, relieved of the requirement of residence. Moreover, such proof entitles him to issuance of final certificate, upon payment of the unpaid installments of the price, and it is not necessary to show that the land has been actually used for grazing purposes.

2. Section 2 of the act allows submission of proof by one of the heirs, or by the executor or administrator of the estate of the entryman, if he be dead. However, the certificate is to be issued in favor of the heirs. The executor or administrator, offering proof, must produce record evidence of his appointment and qualification as such.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

IRRIGATION DISTRICTS

[Reported, 52 L. D. 155]

CIRCULAR 592

REGULATIONS CONCERNING STATE IRRIGATION DISTRICTS IN THEIR RELATION TO THE PUBLIC LANDS OF THE UNITED STATES

[Revision of Regulations (Circular 592) approved March 6, 1918 (46 L. D. 307), and of Reprint of August 16, 1920]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 3, 1927.

Registers, United States Land Offices:

1. The act of August 11, 1916, chapter 319 (39 Stat. 506), entitled "An act to promote the reclamation of arid lands," reads as follows: (Act omitted.)

PURPOSE AND EFFECT OF STATUTE

2. The purpose and effect of this statute is to empower the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts heretofore or hereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which final certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid

is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

REGULATIONS

3. *Application.*—Any irrigation district desiring to obtain the benefits of this act should file in the local United States land office within which the lands are situated an application, in duplicate, consisting of the following:

(*a*) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power site, or other withdrawal); how much (per cent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the reclamation act of June 17, 1902 (32 Stat. 388), or is pending, and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(*b*) Proof of organization.

(*c*) Evidence of water right and sufficiency of available water supply.

(*d*) Maps showing the project.

(*e*) Plans and specifications.

(*f*) Such data as may be necessary to a full understanding of the situation.

DETAILS OF APPLICATION

4. *Proof of organization*, (see par. 3b).—A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

5. *Evidence of water right*, (see par. 3c).—If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to this act, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and

the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

6. *Maps.*—There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black india ink, letters corresponding to the status of the land, as follows:

(*a*) Privately owned land.

(*b*) Lands which have been entered but for which final certificate has not been issued.

(*c*) Lands withdrawn under the reclamation act.

(*d*) Lands otherwise withdrawn.

(*e*) Unentered public lands.

NOTE.—If a tract of land appears to come within two of the designations, both letters should be used.

Unless one-eighth of any smallest legal subdivision (of 40 acres or less) is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

These tracings should be made on tracing linen with india ink. Three scales are permissible—2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no case should any one tracing be over 36 inches in width.

The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system, as well as cross sections, properly drawn to scale, of dams and canals.

If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the act of May 15, 1922 (42 Stat. 541), hereinafter quoted. If, however, public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

7. *Plans and specifications* (see par. 3e).—If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

8. *Other data* (see par. 3f).—As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the Secretary of the Interior all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required by the department if the data stated upon the original application prove insufficient.

9. *Affidavits and certificates.*—Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1 attached hereto. They should also bear the affidavit of the district's chief engineer, in accordance with Form No. 2 attached hereto. This certificate and affidavit should be inscribed upon the maps in india ink.

10. *Rights of way.*—If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right of way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

11. *Unsurveyed lands.*—Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

PROCEDURE

12. *Lands in more than one district.*—Where the lands within the confines of the proposed irrigation district lie within more than one local land district, it will only be necessary to file the data in duplicate hereinbefore adverted to in one of the land districts; a blueprint copy of the map and one copy of the statement, however, should be filed in the other districts, together with a notice to the register that the application, in duplicate, has been filed in the other district (naming it).

13. *Duty of register.*—Upon the filing of such an application in the local office the register will assign a serial number to same and note upon the maps filed with the application the name of the land office and the date of filing over his written signature. After testing by his records the accuracy of the notations on said map, as required by paragraph 6 of these regulations, he will note upon his records opposite all unpatented lands shown upon the map the fact and date of such filing, after which he will at once transmit the entire record to the General Land Office.

14. *Consideration of application.*—Upon receipt of the record in the General Land Office, it will be considered with reference to its regularity and compliance with the terms of these regulations and disposed of as follows:

(*a*) If all the unpatented lands are within a United States reclamation project, depending solely upon Government water appropriation, and the record is regular, it will be referred to the Bureau of Reclamation for consideration as to feasibility, which bureau will make its recommendation in the premises to the Secretary of the Interior through the General Land Office.

(*b*) If the lands within the district are partially within a United States reclamation project and partially unpatented public lands, depending for water upon other than Government appropriations, the case will be referred to the Bureau of Reclamation for such report as it may deem proper, after which and after field investigation the Commissioner of the General Land Office will consider the record with respect primarily to the lands not affected by the United States reclamation project, and transmit the record with proper recommendation to the Secretary of the Interior for appropriate action.

(*c*) If the unpatented lands within the district are all public and unaffected by United States reclamation withdrawal, the Commissioner of the General Land Office will, after investigation in the field, consider and transmit the record to the Secretary of the Interior with recommendation.

15. Upon the approval of an application by the Secretary of the Interior the Commissioner of the General Land Office will cause to be noted upon the tract books of his office the fact and date of such approval, and will transmit to the local land office or offices wherein the lands affected are situated one copy of the map. Upon receipt of such copy, the register will at once note on his records opposite each tract of unentered or entered and unpatented land designated the fact and date of such approval and notify the irrigation district thereof.

ACT OF MAY 15, 1922 (42 STAT. 541)

16. Section 3 of the act of May 15, 1922 (42 Stat. 541), provides as follows:

> That upon the execution of any contract between the United States and any irrigation district pursuant to this act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the act entitled "An act to promote the reclamation of arid lands," approved August 11, 1916: *Provided*, That no map or plan as required by section 3 of the said act need be filed by the irrigation district for approval by the Secretary of the Interior.

This section is construed as an amendment of the act of August 11, 1916 (39 Stat. 506), in that it makes unnecessary the filing of a map or plan of the district for the approval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the act of August 11, 1916, supra.

Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the act of August 11, 1916, supra, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the act of August 11, 1916, supra, filing a list thereof.

In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approved plats of survey of the lands within such district, properly subject to designation under said act of August 11, 1916, and the approval of such a contract by the Secretary, unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

In practice the Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the act of August 11, 1916 (39 Stat. 506). From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

These lists should then be referred by the Bureau of Reclamation to the General Land Office with a view to the elimination of any lands not subject to entry (i. e., withdrawn or reserved), whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

The Commissioner of the Bureau of Reclamation will furnish the Commissioner of the General Land Office with two copies of all such contracts, together with two blue-print maps of the district.

From these the Commissioner of the General Land Office will cause proper notations to be made on the records of his office, and will also issue the necessary instructions to the local office with a view to the proper notation of the records and the enforcement of the provisions of the act of August 11, 1916, supra, as to the lands designated.

17. *Taxes and assessments.*—(*a*) Where an irrigation district has been approved by the Secretary of the Interior the district must, after each assessment, file with the register of the local land office within which the lands of the district are situated an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form, in compliance with the provisions of the State law and of this act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(*b*) Where contracts heretofore or hereafter made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

ENTRIES GENERALLY

18. For the purpose of entry, the act of August 11, 1916 (39 Stat. 506), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the act of June 17, 1902 (32 Stat. 388), and lands not so withdrawn.

For the purpose of administration the lands within such a district may be considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

The following instructions will govern in the case of entries for lands within irrigation districts approved by the Secretary of the Interior either in the manner provided by the act of August 11, 1916 (39 Stat. 506), or section 3 of the act of May 15, 1922 (42 Stat. 541).

ENTRIES UNDER RECLAMATION ACT

19. Lands within an approved district withdrawn under the act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

When lands included in entries made under the act of June 17, 1902, supra, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the act of June 23, 1910 (36 Stat. 592), and shall perfect the entry in the same manner required of an assignee under said act.

The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the reclamation act.

The following paragraphs have no application to lands withdrawn under reclamation laws:

ENTRIES UNDER SECTION 5

20. Public lands within an approved district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended by you for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

TAX TITLES GENERALLY

21. No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

ENTRY OF LAND RELINQUISHED (SEC. 6 OF ACT)

22. In case where any tract of entered land within an approved district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

Entries for such land will be limited to 160 acres, as such lands come within the general description of " unentered " lands.

It will be observed that as to such land the requirement as to payment of taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert land law as in the first instance. (Sec. 5 of act.)

If the application is not accompanied by this evidence you will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time you will reject the application, subject to the right of appeal.

CASH ENTRIES (SEC. 6 OF ACT)

23. In case of entered lands within an approved irrigation district not subject to the reclamation act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the register of the local land office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in entries of like land under the homestead laws, and upon satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land.

However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper register all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper register for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

FORM OF APPLICATION TO PURCHASE

24. An application to purchase under this act shall be under oath, and such application and all other proofs, affidavits, and oaths of any kind whatsoever required shall be executed before a proper officer as provided in section 2294, Revised Statutes, as amended. (See Circular 884,[a] 49 L. D. 497.)

The application shall contain a description according to the approved plats of survey of the land sought to be purchased and shall give the serial number or numbers of the entry or entries in which the land is then included. The applicant shall also show by like evidence required in such cases that he has the qualifications of a homestead or desert-land entryman, furnishing the proof thereof, together with evidence required by Circular 1066 of May 25, 1926.

He must show whether he is applying as purchaser at tax sale, as assignee of such purchaser, or is seeking to be subrogated to the right of such purchaser or assignee.

The application shall not embrace less than a legal subdivision or more than 160 acres and shall not include land in more than one land district and shall be accompanied by the usual fees and commissions provided in entries of like land under the homestead laws, together with the purchase price of the land, not less than $1.25 per acre, or such other price as may be fixed by law for such land.

As the laws governing the sale of lands for taxes are not the same in the several States affected by this act, and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing proof of tax titles. However, the following general rules must be observed:

If the tax title is based on court proceedings a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of court should make specific reference to the laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute.

If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

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[a] Circular No. 884, revised under date of Sept. 3, 1926, is reported in 51 L. D. 572. See p. 1035.

No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

On receipt of an application to purchase under this act you will serialize and note same on your records.

You will then examine the application as to its compliance with these provisions, especially as to the title of the applicant under the tax-sale provisions of the State law. If the application is not complete in substance, or based on an unredeemable tax title, you will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects you will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries, are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

If appeal is filed you will transmit the entire record to the General Land Office, and if no appeal is filed you will transmit the application, together with a copy of the notice served on the entryman or entrymen, of record, together with proof of service of such notice.

If the application is without objection and contains the evidence herein required and water has been made available for the land, appropriate instructions looking to the issuance of cash certificate will be issued by the General Land Office. If appeal is filed the same will be considered and disposed of in the usual manner.

Pending the authorization of cash certificate, the purchase price of the land will be deposited to the credit of "unearned moneys."

If all be found regular and sufficient except that the irrigation works have not been constructed and water has not been made available, the cash certificate will be withheld pending proof of construction and of the availability of water.

When the application to purchase is approved by the General Land Office and, without regard to whether or not such purchaser shall then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

WILLIAM SPRY, *Commissioner.*

Approved June 3, 1927.

E. C. FINNEY,
First Assistant Secretary.

(Forms omitted.)

ISOLATED TRACTS[a]

FIELD EXAMINATION OF ISOLATED TRACTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 21, 1912.

Chiefs of Field Divisions.

SIRS: Your attention is called to the act of March 28, 1912 (37 Stat. 77), entitled "An Act to amend section 2455 of the Revised Statutes of the United States relating to isolated tracts of public land," particularly that portion contained in the proviso to the effect that legal subdivisions of public land not exceeding one-quarter section "the greater part of which is mountainous or too rough for cultivation, may * * * be ordered into the market and sold * * * upon the application of any person who owns lands or holds a valid entry of lands adjoining said tract, regardless of the fact that such tract may not be isolated or disconnected * * *."

The department has construed this proviso to apply only to lands which are both mountainous and too rough for cultivation.[b] Accordingly, in order to enable the office to determine whether or not applications for sale under the authority of this proviso shall be granted, it will be necessary to have a field examination made of each tract applied for. The agent making the examination should determine and report specifically on these two features, as well as upon the value of the land, for under the ruling of the department the fact that the land is mountainous will not alone warrant its sale under the law.

The instructions herein contained will apply only to applications which are filed under the authority of the proviso referred to. In all other cases it will not be necessary to cause a field examination to be made unless special warrant therefor appears. The Chief of Field Division should be able, from the information in his possession or that possessed by his agents, to determine and report the approximate value of the land in such cases.

Very respectfully,

FRED DENNETT,
Commissioner.

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[a] For instructions involving the sale of isolated tracts in the Kinkaid area, in Nebraska, see Circular No. 254, p. 551.

[b] See instructions of Apr. 17, 1913, p. 740.

CIRCULAR No. 212

APPRAISEMENT OF ISOLATED TRACTS—NOTATION ON RECORDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 11, 1913.

Registers and Receivers, United States Land Offices.

SIRS: Upon receipt of a report of the Chief of Field Division provided for in section 2, paragraph 23, of Circular No. 72, dated January 19, 1912, and in section b, paragraph 8, of Circular No. 202, dated December 18, 1912,[c] you will make notations on your records of the price of the land as reported by the Chief of Field Division, and should no sale result based upon the application presented, any subsequent applications under said acts for the same land, presented within three years from date of the report of the Chief of Field Division, need not be referred to the Chief of the Field Division, but you will, before transmitting same to this office, note thereon the price of the land as reported by the Chief of Field Division, making reference to the serial number of the former application.

Respectfully,

FRED DENNETT, *Commissioner.*

Approved.

LEWIS C. LAYLIN, *Assistant Secretary.*

[Reported, 42 L. D. 88]

ISOLATED TRACTS—MOUNTAINOUS OR ROUGH LANDS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 17, 1913.

Registers and Receivers, United States Land Offices.

SIRS: In order to conform the same to the terms of the first proviso to the act of March 28, 1912 (37 Stat. 77), the regulations thereunder on page 5 of Circular No. 202, dated December 18, 1912, and page 8 of Circular No. 203, regulations under the Kinkaid Acts effective only in Nebraska, dated December 18, 1912 (41 L. D. 448, 500), are hereby amended so that wherever the words "mountainous *and* too rough for cultivation" appear the same shall read "mountainous *or* too rough for cultivation."[d]

These instructions will apply to all supplemental circulars and regulations under said act and you will be governed accordingly in the disposition of applications thereunder.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

FRANKLIN K. LANE, *Secretary.*

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[c] Circular No. 72 of Jan. 19, 1912, has been superseded by Circular No. 254 of July 17, 1913. See par. 23, p. 552. Circular No. 202, dated Dec. 18, 1912, has been superseded by Circular No. 684 of Apr. 7, 1928, p. 742.

[d] Circular No. 202 of Dec. 18, 1912, has been superseded by Circular No. 684 of Apr. 7, 1928, p. 742, and Circular No. 203 of Dec. 18, 1912, has been superseded by Circular No. 254 of July 17, 1913, p. 548.

[Reported, 43 L. D. 220]

CIRCULAR No. 317

PUBLIC SALE OF LANDS—QUALIFICATIONS AS TO CITIZENSHIP

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 18, 1914.

Registers and Receivers, United States Land Offices.

SIRS: In accordance with departmental instructions of January 31, 1914, you are advised that the department is of the opinion that the rule announced in the case of Andrew Rafshol (38 L. D. 84), was a proper one and that it should be applied to all purchasers at public sale where the right to purchase was not limited by the statutes to native born or naturalized citizens.

Therefore, in the case of all sales of public lands where the right to purchase is not thus limited, it will be sufficient if the purchaser shows that he has declared his intention to become a citizen of the United States in order to entitle him to purchase at such sale. You will be governed accordingly and will adjudicate all pending cases of purchases at public sale in accordance with this regulation.

The regulation of December 18, 1912 (41 L. D. 443), requiring purchasers of isolated tracts to be citizens of the United States, is modified to conform to the foregoing.

Very respectfully,

JOHN MCPHAUL,
Acting Assistant Commissioner.

Approved.

A. A. JONES, *First Assistant Secretary.*

CIRCULAR No. 448

INDORSEMENT ON APPLICATIONS UNDER SECTION 2455, REVISED STATUTES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 24, 1915.

Registers and Receivers, United States Land Offices.

SIRS: For the information of the chief of field division to whom the paper is sent, you will indorse on the margin of all applications for offering under section 2455, Revised Statutes, "Tract isolated," or "Tract not isolated." If the application is indorsed "Tract isolated," the chief of field division will understand that the tract is isolated within the meaning of paragraph 7 of Circular No. 371 [e]; if "Tract not isolated" appears, it will advise him that the application is for the offering of a tract under the first proviso to section 2455, Revised Statutes, as amended by the act of March 28, 1912 (37 Stat. 77).

Very respectfully,

CLAY TALLMAN, *Commissioner.*

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[e] Circular No. 371 has been superseded by Circular No. 684, p. 742.

[Reported, 52 L. D. 340]

CIRCULAR NO. 684

OFFERINGS AT PUBLIC SALE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 7, 1928.

Registers, United States Land Offices.

SIRS: The sale of isolated tracts of unreserved public land and tracts not isolated, but which are mountainous or too rough for cultivation, is authorized by section 2455 of the Revised Statutes (section 1171, title 43, United States Code), as amended by the acts of June 27, 1906 (34 Stat. 517), March 28, 1912 (37 Stat. 77), and March 9, 1928 (45 Stat. 253). Special provisions as to lands in western Nebraska are found in the act of March 2, 1907 (34 Stat. 1224).

The present instructions constitute a revision of those of February 25, 1926 (51 L. D. 357).

GENERAL REGULATIONS

1. Applications to have isolated tracts ordered into market must be filed with the register of the local land office for the district wherein the lands are situated except in the States of Alabama, Kansas, Louisiana, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Ohio, Oklahoma, and Wisconsin. These States have no district land office, and applications for land therein should be forwarded to the Commissioner of the General Land Office, Washington, D. C.

2. Applicants must show by their affidavits, corroborated by at least two witnesses, that the land contains no salines, coal, or other minerals; the amount, kind, and value of timber or stone thereon, if any; whether the land is occupied, and if so, the nature of the occupancy; for what purpose the land is chiefly valuable; why it is desired that same be sold; that applicant desires to purchase the land for his own individual use and actual occupation and not for speculative purposes; and that he has not heretofore purchased under section 2455, Revised Statutes, or the amendments thereto, isolated tracts, the area of which when added to the area applied for will exceed approximately 320 acres; and that he is a citizen of the United States or has declared his intention to become such. Also a duly corroborated affidavit showing that no spring or water hole exists, if it be a fact, upon any legal subdivision of the land applied for; or if there be any spring or water hole, the affidavit should state the exact location and size thereof, together with an estimate of the quantity of water in gallons which it is capable of producing daily. If applicant has heretofore purchased lands under the provisions of the acts relating to isolated tracts, same must be described in the application by subdivision, section, township, and range.

These provisions are modified, however, in the class of cases referred to in paragraph 5 (*b*).

3. The affidavits of applicants to have isolated tracts ordered into market and of their corroborating witnesses may be executed before

any officer having a seal and authorized to administer oaths in the county or land district in which the tracts described in the applications are situated. Affidavits relating to lands in those States having no local office may be executed anywhere within the State.

4. The officer before whom such affidavits are executed will cause each applicant and his witnesses to fully answer the questions contained upon the accompanying form and, after the answers to the questions therein contained have been reduced to writing, to sign and swear to same before him.

5. (*a*) No sale will be authorized upon the application of a person who has purchased under section 2455, Revised Statutes, or the amendments thereto, any lands the area of which, when added to the area applied for, shall exceed approximately 320 acres.

(*b*) Where one or more tracts, each not exceeding 120 acres in area, are entirely surrounded by land owned by the applicant and have been isolated for five or more years, an offering may be allowed without regard to the limitations as to extent of purchases by the applicant, set forth in paragraphs 2 and 5 (*a*), provided the lands sought are not valuable for farming but are chiefly valuable for grazing or for special use in connection with the adjoining lands. Applicants under this subparagraph must furnish proof of ownership of the land surrounding that applied for; also detailed evidence as to the character of the land applied for, particularly with respect to its comparative values for farming, grazing, and special use in connection with the adjoining lands, which evidence must consist of an affidavit by the applicant corroborated by the affidavits of not less than two disinterested persons having actual knowledge of the facts. In other respects these cases are governed by the general regulations.

6. No tract exceeding approximately 320 acres in area will be ordered into the market. An application may include several incontiguous tracts provided their aggregate area does not exceed 320 acres. Each tract will be offered separately and certificates will be issued under different numbers unless they are bought by the same person.

7. No tract of land will be deemed isolated and ordered into the market unless, at the time application is filed, the said tract has been subject to homestead entry for at least two years after the surrounding lands have been entered, except in cases where some extraordinary reason is advanced which may be found sufficient to warrant waiving this restriction.

8. The register will, on receipt of applications, note same upon the tract books of his office, and if the applications are not properly executed or not corroborated he will reject the same, subject to the right of appeal. Applications found to be properly executed and corroborated will be disposed of as follows:

(*a*) If the applicant does not show himself qualified, or if the tract appears not to be subject to disposition under the provisions of paragraph 7, or if all the land is appropriated, the register will reject the application subject to the usual right of appeal; if part of the tract is appropriated, he will reject the application as to that part, and, in the absence of an appeal after the usual notice, he will eliminate the description thereof from the application and take further action as though it had never been included therein. Where an appeal is filed, the Commissioner of the General Land Office, if he decides to order into market a part, or all, of the lands, will call upon the register and the division inspector for the reports as next provided for, concerning the value of the land. Adverse action by the commissioner will be subject to appeal to the Secretary of the Interior.

(*b*) If all the land applied for is vacant and not withdrawn or otherwise reserved from such disposition and the status of the surrounding lands is such that a sale might properly be ordered under paragraph 7, the register, after noting the application on his records, will promptly forward the same to the division inspector for report as to the value of the land and any objection he may wish to interpose to the sale, and the register will make proper notations on his schedule or serial numbers in the event the application is not returned in time to be forwarded with the current returns. Upon receipt of the application from the division inspector with his report thereon, the register will attach his report as to the status of the land and that surrounding, the value of the land applied for, if he has any knowledge concerning the same, and any objection to the sale known to him, and forward the papers to the General Land Office with the current returns.

9. An application for sale will not segregate the land from entry or other disposal, for such lands may be entered at any time before the receipt in the local land office of the letter authorizing the sale and its notation of record or, as to land in those States having no local officer, before the date of the order of sale. If any or all of the land applied for be entered or filed upon while the application for sale is in the hands of the division inspector, the register will so advise him; if all the land be thus entered or filed upon he will request the return of the application for forwarding to the General Land Office.

If all of the land applied for be entered or filed upon at any time prior to receipt of a letter from the General Land Office authorizing an offering, the register will at once close the case on his records, notify the applicant of the action, and promptly report the facts to said office, where the matter will be closed on its records without letter; similarly, a case will be closed in part and like notice and report will be sent if an entry or filing be made for part of the land involved.

10. Upon receipt of letter authorizing the sale the register will at once examine the records to see whether the tract, or any part thereof, has been entered. If the examination of the record shows that all of the tract has been entered or filed upon, the register will not promulgate the letter authorizing the sale, but will report the facts to the General Land Office, whereupon the letter authorizing the sale will be revoked. If a part of the land has been entered, he will so report and note on the tract book, opposite such portion of the tract as is found to be clear, that sale has been authorized, giving the date of the letter. Thereupon the land will be considered segregated for the purpose of sale. The minimum price set by the order for sale should also be noted on the records. In the event no sale is had the price so noted will be effective as to any subsequent application for offering, filed within three years after the date of the report of the division inspector.

The register will prepare a notice for publication on the form hereinafter given, describing the land found to be unentered, and fixing a date for the sale, which date must be far enough in advance to afford ample time for publication of the notice, and for the affidavit of the publisher to be filed in the local land office prior to the date of the sale. The register will also designate a newspaper as published nearest to the land described in the notice. The notice will be sent to the applicant with instructions that he must publish the same at his expense in the newspaper designated by the register. Payment for publication must be made by applicant directly to the publisher, and in case the money for publication is transmitted to the register he must issue receipt therefor and immediately return the money to the applicant by his official check, with instructions to arrange for the publication of the notice as hereinbefore provided.

If evidence of publication is not filed at or before the time set for the offering, the register will close the case on his records, and will report the default to the General Land Office, which will, without letter, close the case on its records.

11.[f] Notice must be published for 30 days preceding the date set for the sale, and a sufficient time should elapse between the date of last publication and the date of sale to enable the affidavit of the publisher to be filed in the local office. The notice must be published in the paper designated by the register as nearest the land described in the application. If this be a daily paper, the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if weekly, in 5; and if semiweekly, in 9 consecutive issues. The register will cause a similar notice to be posted in his office, such notice to remain posted during the entire period of publication. The applicant must file in the local office, prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence may consist of the affidavit of the publisher, accompanied by a copy of the notice published.

12. At the time and place fixed for the sale the register will read the notice of sale and allow all qualified persons an opportunity to bid. Bids may be made through an agent personally present at the sale, as well as by the bidder in person. The register conducting the sale will keep a record showing the names of the bidders and the amount bid by each. Such record will be transmitted to this office with the other papers in the case.

When all persons present shall have ceased bidding, the register will, in the usual manner, declare the sale closed, announcing the offerer thereof (or his principal) will be declared the purchaser, provided he immediately pay to the register the amount of the bid; in name of the highest bidder; the highest bid will be accepted and the the absence of such payment the register will at once proceed with the sale, excluding bids by him, and starting with the highest bid not withdrawn. The accepted bidder must, within 10 days after the sale, furnish evidence that he is a citizen of the United States or has declared his intention to become such; also, a nonmineral affidavit or (in the States where that is sufficient) a nonsaline affidavit,

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[f] See instructions of Oct. 19, 1929, p. 1149.

Upon the filing of these papers the register will issue final cash certificate.

13. No lands will be sold at less than the price fixed by law, nor at less than $1.25 per acre; but a minimum price will be set by the letter ordering the sale, based upon the report of the division inspector. Should any of the lands offered be not sold, the same will not be regarded as subject to private entry unless located in the State of Missouri (act of March 2, 1889, 25 Stat. 854), but may again be offered for sale in the manner herein provided.

14. After each offering where the lands offered are not sold, the register will close the case on his records and report by letter to the General Land Office. No report by letter will be made when the offering results in a sale; but the register will issue cash papers as in ordinary cash entries, noting thereon the date of the letter authorizing the offering, and report the same in his current returns. With the papers must also be forwarded the affidavit of publisher showing due publication and the register's certificate of posting. In all cases where no sale is had the land will, in the absence of other objections, become subject to entry or filing at once without action by this office.

ACT OF MARCH 9, 1928 (45 STAT. 253)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2455 of the Revised Statutes of the United States (section 1171, title 43, United States Code), as amended, be, and is hereby, amended to read as follows:

"SEC. 2455 (section 1171, title 43, United States Code). It shall be lawful for the Secretary of the Interior to order into market and sell at public auction, at the land office of the district in which the land is situated, for not less than $1.25 an acre, any isolated or disconnected tract or parcel of the public domain not exceeding three hundred and twenty acres which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land office of the district in which such land may be situated: *Provided,* That any legal subdivisions of the public land, not exceeding one hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section: *Provided further,* That this section shall not defeat any valid right which has already attached under any pending entry or location."

REGULATIONS UNDER FIRST PROVISO TO ACT OF MARCH 9, 1928

15. The first proviso to the act copied above authorizes the sale of legal subdivisions not exceeding one-quarter section, the greater part of which is mountainous or too rough for cultivation, upon the application of any person who owns or holds a valid entry of lands adjoining such tract and regardless of the fact that such tract may not be actually isolated by the entry or other disposition of surrounding lands. Applications will be disposed of by you in accordance with the "General Regulations," except paragraph 7, which is not applicable. Applications may be made upon the form provided (4–008b), and printed herein, properly modified as necessitated by the terms of the proviso. In addition the applicant or applicants must furnish proof of his or their ownership of the whole title to adjoining land, or that he holds a valid entry embracing

adjoining land, in connection with which entry he has met the requirements of the law; also detailed evidence as to the character of the land applied for, the extent to which it is cultivable, and the conditions which render the greater portion unfit for cultivation; also a description of any and all lands theretofore applied for under the proviso or purchased under section 2455 or the amendments thereto. This evidence must consist of an affidavit by the claimant, corroborated by the affidavits of not less than two disinterested persons having actual knowledge of the facts.

No person will be allowed more than one application under this proviso, except that two or more applications may be allowed to the same person if all the lands sought adjoin the same body of land owned by the applicant or included in his pending entry. An application under the first proviso will be rejected in all cases where the applicant has purchased under section 2455, or the amendments thereto, an area which, when added to the area applied for, shall exceed approximately 160 acres.

In acting on applications for offering under the proviso, regard will be had to the character of each subdivision applied for, as reported by the division inspector, and offering of an entire tract will not be had upon the ground that the greater part is of the character contemplated thereby, if taken as a whole.

16. In the notices for publication and posting, where sale is authorized under the proviso, you will add after the description of the land, " This tract is ordered into the market on a showing that the greater portion thereof is mountainous or too rough for cultivation."

ISOLATED TRACTS OF COAL LAND

17. The act of Congress approved April 30, 1912 (37 Stat. 105), provides:

> That * * * unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall * * * be subject * * * to disposition * * * under the laws providing for the sale of isolated or disconnected tracts of public lands, but there shall be a reservation to the United States of the coal in all such lands so * * * sold, and of the right to prospect for, mine, and remove the same in accordance with the provisions of the act of June 22, 1910, and such lands shall be subject to all the conditions and limitations of said act.

An application to have coal land offered at public sale must bear on its face the notation:

> Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

Where such an application does not bear this notation, you will afford applicant an opportunity to consent thereto and will reject the application if this requirement be not complied with.

In the printed and posted notice of sale will appear the statement:

> This land will be sold in accordance with, and subject to, the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

The purchaser's consent to the reservation of the coal in the land to the United States will not be required, but the cash certificate and patent will contain respectively the provisions specified in paragraph 7 (*b*) of the circular of September 8, 1910.

TRACTS CONTAINING PHOSPHATE, ETC.

18. The act of Congress approved July 17, 1914 (38 Stat. 509), provides:

> That * * * lands * * * withdrawn or classified as * * * phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, shall be subject to * * * purchase, if otherwise available, under the nonmineral land laws of the United States, whenever such * * * purchase shall be made with a view to obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same.

An application for offering of the lands referred to in said act must bear on its face the notation:

> Application made in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

If an application for such mineral land does not bear that notation, you will afford the applicant opportunity to consent thereto, and if he fails to do so, you will reject the application.

In the printed and posted notice of sale will appear the statement:

> This land will be sold in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

The purchaser's consent to the reservation of the minerals in the land to the United States will not be required, but the cash certificate and patent will contain, respectively, the provisions specified in paragraph 6 of the circular of March 20, 1915 (44 L. D. 32, 34).

19. All applications for the sale of public lands under these regulations must be rejected where it appears that the land applied for is within the limits of a producing oil or gas field or is embraced in an existing oil or gas prospecting permit or lease under act of February 25, 1920 (41 Stat. 437), or an application for such permit or lease, and an application for such permit or lease filed before the land becomes segregated in the manner indicated in paragraph 9 hereof will defeat the application hereunder.

Very respectfully,

Thos. C. Havell,
Acting Commissioner.

Approved April 7, 1928.

E. C. Finney,
First Assistant Secretary.

(Form omitted.)

LOUISIANA LANDS

[Reported, 51 L. D. 86]

Circular No. 991

INSTRUCTIONS UNDER THE ACT OF FEBRUARY 19, 1925

Department of the Interior,
General Land Office,
Washington, April 2, 1925.

Register and Receiver, *Baton Rouge, La.*

Gentlemen: The act of February 19, 1925 (43 Stat. 951), entitled "An act granting to certain claimants the preference right to purchase unappropriated public lands," provides:

That the Secretary of the Interior, in his judgment and discretion, is hereby authorized to sell, in the manner hereinafter provided, any of those lands situated in the State of Louisiana which were originally erroneously meandered and shown upon the official plats as water-covered areas and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws.

That any citizen of the United States who, or whose ancestors in title in good faith under color of title or claiming as a riparian owner has, prior to this act, placed valuable improvements upon or reduced to cultivation any of the lands subject to the operation of this act, shall have a preferred right to file in the office of the register and receiver of the United States land office of the district in which the lands are situated, an application to purchase the lands thus improved by them at any time within 90 days from the date of the passage of this act if the lands have been surveyed and the plats filed in the United States land office; otherwise within 90 days from official notice to such claimant of the filing of such plats. Every such application must be accompanied with satisfactory proof that the applicant is entitled to such preference right and that the lands which he applies to purchase are not in the legal possession of an adverse claimant or in the actual possession of a person, or persons, who have improved the property and have attempted to enter same in compliance with the laws and regulations of the United States land office

That upon the filing of an application to purchase any lands subject to the operation of this act, together with the required proof, the Secretary of the Interior shall cause the lands described in said application to be appraised, said appraisal to be on the basis of the value of such lands at the date of the appraisal, exclusive of any increased value resulting from the development or improvement thereof for agricultural purposes by the applicant or his predecessor in interest, but inclusive of the stumpage value of any timber cut or removed by the applicant or his predecessor in interest.

That an applicant who applies to purchase lands under the provisions of this act, in order to be entitled to receive a patent, must within six months from receipt of notice of appraisal by the Secretary of the Interior pay to the receiver of the United States land office of the district in which the lands are situated, the appraised price of the lands, and thereupon a patent shall issue to said applicant for such lands as the Secretary of the Interior shall determine that such applicant is entitled to purchase under this act. The proceeds derived by the Government from the sale of the lands hereunder shall be covered into the United States Treasury and applied as provided by law for the disposal of the proceeds from the sale of public lands.

That the Secretary of the Interior is hereby authorized to prescribe all necessary rules and regulations for administering the provisions of this act and determining conflicting claims arising thereunder.

SEC. 2. That all purchases made and patents issued under the provisions of this act shall be subject to and contain a reservation to the United States of all the coal, oil, gas, and other mineral in the lands so purchased and patented, together with the right to prospect for, mine, and remove the same

Applications to purchase under the above act must be sworn to and may be executed before any officer having a seal and authorized to administer oaths in the county or land district in which the lands are located, and must be filed with the register and receiver of the local land office in that district within 90 days from the passage of this act, if the lands have been surveyed and plats filed in the local office, otherwise within 90 days from the filing of such plat. The applicant must show that he is either a native-born or a naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based; in other words, a complete history of the claim, and that the lands applied for are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation, if any, and how long continued. Such application must be supported by the affidavit of at least two persons having personal knowledge of the facts alleged in the application. Upon receipt of such application the local officers will assign a current serial number thereto.

If the land applied for is surveyed and is vacant, the local officers, after noting the application on their records, will suspend action thereon and will promptly forward it to the division inspector for investigation and appraisement of the land in accordance with the provisions of the act. If for unsurveyed land, the local officers will note the application and suspend same transmitting it to the Commissioner of the General Land Office for consideration as to whether or not the lands applied for are in fact public lands and of the class contemplated by the act under which title is sought. During such suspension the lands described in the application shall not be disposed of.

When an application is received by the division inspector he will assign same to a field examiner for investigation and appraisement of the land in accordance with the provisions of the act. The examiner will make a written report thereon as to the development or improvement for agricultural purposes and the evidence obtained as to whether or not the lands are of the class contemplated by the act, also recommending the allowance or rejection of the application. If such report is favorable, and the division inspector is of the opinion that the application should be allowed, he will return it to the register and receiver with the appraisement, report, and recommendation to that effect, whereupon the register and receiver will pass upon it in regular order in the light of the report which is to be attached to the record and made a part of the application, and transmit same to the General Land Office with their recommendations. If, however, the division inspector is of the opinion that the entry should not be allowed he will have a full report prepared and transmit the entire record to the General Land Office for consideration and action, advising the register and receiver thereof. If the report justifies such action, this office will direct proceedings against the application under the circular of February 26, 1916, under which the claimant would have the right to apply for a hearing to determine whether or not he is entitled to purchase the lands applied for.

If, upon consideration of the application in the General Land Office, with report and appraisement, it shall be determined that the applicant is entitled to purchase the lands applied for, the local office will be authorized to notify the applicant at once, by registered mail, that he must within six months from receipt of notice deposit with the receiver the appraised price of the land or else forfeit all his rights under his application.

Upon payment of the appraised price of the land the local officers will issue notice of publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation designated by the register in the vicinity of the lands, once a week for five consecutive weeks, or 30 consecutive days if in a daily paper, immediately prior to the date of sale, but a sufficient time shall elapse between the date of the last publication and the date of sale to enable the affidavit of the publisher to be filed in the local office.[a] The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. The register and receiver will also cause a copy of such notice of publication to be posted in their office during the entire period of publication. The applicant must file in the local office prior to the date fixed for the sale evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher accompanied by a copy of the notice so published.

Upon the submission of satisfactory proof, the register and receiver will, if no protest or contest is pending, allow a final entry and issue final certificate, such certificate to contain a stipulation that all the minerals in the lands described in the application are reserved to the United States with the right to prospect for, mine and remove same, transmitting same to the General Land Office, with their regular monthly returns.

Very respectfully,

William Spry, *Commissioner.*

Approved April 2, 1925.

E. C. Finney,
First Assistant Secretary.

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[a] See instructions of Oct. 19, 1929, p. 1149.

CIRCULAR NO. 1065

REGULATIONS RELATIVE TO THE DISPOSITION OF CERTAIN LANDS IN THE LIVE OAK NAVAL RESERVE, LA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 25, 1926.

REGISTER, *Baton Rouge, La.*

SIR: Under the act of March 1, 1817 (3 Stat. 347), certain lands in Louisiana were reserved for naval purposes by Executive order of February 29, 1820, because of the " live oak " thereon.

The act of February 16, 1923 (42 Stat. 1258), entitled "An act to authorize the Secretary of the Navy to certify to the Secretary of the Interior, for restoration to the public domain, lands in the State of Louisiana not needed for naval purposes," reads, in part, as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Navy be, and he is hereby, authorized to cause to be certified to the Secretary of the Interior, for restoration to the public domain, the whole or such portion or portions of the several tracts of land in the State of Louisiana heretofore set apart and reserved for naval uses as are no longer required for the purpose for which they were reserved or for any purpose connected with the naval service, and upon such certification the tracts of land described herein shall be duly restored to and become a part of the public lands of the United States; and a preference-right entry for a period of six months from the date of this act shall be given all bona fide settlers who are qualified to enter under the homestead law and have made improvements and are now residing upon any agricultural lands in said reservations and for a period of six months from the date of settlement, when that shall occur, after the date of this act: *Provided,* That persons who enter under the homestead laws shall pay for such lands the value heretofore or hereafter determined by appraisement, not less than the price of the land at the time of entry; and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior. * * *

Certification of such lands to the Secretary of the Interior was made effective by a letter from the Acting Secretary of the Navy, dated March 30, 1923, whereby the restoration to the public domain of all those several tracts of land in the State of Louisiana which were reserved and set apart for naval purposes by said order of the President of February 29, 1820, was accomplished.

The said act of February 16, 1923, provided further for confirmation of title to lands covered by certificates of purchase issued by the Opelousas land office which certificates were specifically enumerated in said act. Instructions relative to the confirmation of title to such lands were issued July 3, 1923. All such lands have been confirmed to the purchasers under such certificates and patents issued therefor.

The lands in such Live Oak naval reserve, situated in St. Mary and St. Martin Parishes, La., that are not embraced in the confirmed claims and are subject to homestead entry have been appraised as follows. The appraised price per acre is at the rate of $1.25 for the land and $2 per M. for the timber.

(Schedule of appraisements omitted.)

The merchantable timber is comprised of tupelo, cypress, red oak, and willow on each tract containing timber.

The appraisers reported no surface indication of mineral upon any of these lands, but that there was a possibility that oil may be found underneath, for the reason that lands in the vicinity have been leased for oil and a number of test wells have been sunk near by. Application for such lands must, therefore, be made in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

The lands above described will become subject to entry under the homestead law, and as provided by said act of February 16, 1923, at not less than the appraised price thereof by ex-service men of the war with Germany, under the terms and conditions of Public Resolution No. 29 of February 14, 1920 (41 Stat. 434), as amended by Public Resolution No. 36, approved January 21, 1922 (42 Stat. 358), Circular No. 822, for a period of 91 days, beginning with the 28th day from the date hereof. Thereafter, any of said land remaining unentered will be subject to settlement and homestead entry by the general public.

Subsequent to the approval of these regulations, and prior to the date of restoration to general disposition as herein provided for, no rights may be acquired to said land by settlement in advance of entry, or otherwise, except strictly in accordance herewith.

Persons having valid existing rights or equitable claims may avoid confusion by asserting such rights during the 20 days preceding the soldiers' preference-right period.

Ex-service men should file certified copies of their certificates of discharge with their applications, and persons claiming preference rights should file affidavits supporting such claims with their applications.

Entryman may, at his option, commute after 14 months from the date of settlement with full payment in cash. In all cases where 3-year proof is submitted and after its acceptance, entryman may pay for the land the full amount of the appraised value thereof without interest, or he may make payment in five equal installments, the first payment to be made one year after the acceptance of his final proof, and the subsequent payments to be made annually thereafter, interest to be charged at the rate of 5 per cent per annum from the date of acceptance of final proof until all payments are made.

In case the full amount is paid after 14 months from the date of settlement, you will, if the proof is satisfactory, issue cash certificate, and in the event that regular final proof is made and the full amount then paid, you will issue final certificate, but when partial payments are made, you will issue a receipt only for the amount of the principal and the interest paid, and at the time the last payment is made, you will issue final certificate.

In issuing final papers you will make the proper annotations thereon, as well as on the applications and abstracts, to show that the entry covers land in the Live Oak naval reserve.

Where, upon submitting final proofs, the entrymen elect to make payment for the lands entered in five annual installments, you are authorized to make the usual charges for the testimony reduced to writing, but as the final certificate can not be issued until the last payment is made, you can not charge the final commissions until said final payment is made. Therefore, if the proofs submitted are acceptable, you will make proper notes on your records showing that satisfactory proofs have been made and the date upon which the partial payments must be made, so advise entryman in each case, and then transmit said proofs to this office for filing with the original entries.

The appraisers reported that there is an old frame house located on lot 2, section 37, T. 15 S., R. 12 E., Louisiana meridian, Louisiana, on Navy Commissioner's Island, which was built some 40 years ago by George Morgan (deceased). The house is occupied by the widow of said George Morgan and her son, George Morgan, and family, who have resided on this island all their lives, apparently believing they own such tract, but as such lands have been embraced in a naval reserve since February 29, 1820, any claim made by them under the contract for sale made between individuals for lands embraced therein is invalid. You will forward a copy of these regulations to Mrs. Morgan and call her particular attention to her right to apply for the land upon which she has been living during the 20 days preceding the soldiers' preference-right period mentioned herein.

The State's claim to such lands as swamp under the act of September 28, 1850, (9 Stat. 519), was rejected by letter G of December 18, 1913.

You will, upon receipt hereof, make the proper notations of these regulations upon your records, post a copy hereof in your office, and give as much publicity as possible to the opening as a matter of news without expense to the Government, by forwarding a copy hereof to the post office nearest the land for posting therein for the information of the public, and by transmitting copies hereof, or an item concerning the opening, to the newspapers published nearest the land, being careful not to send such copy or item without calling particular attention to the fact that the same is sent as news, and that the Government will not be responsible for the cost of any publication thereof.

Promptly report your compliance with the instructions herein contained.

Very respectfully,

William Spry, *Commissioner.*

Approved May 25, 1926.

E. C. Finney,
First Assistant Secretary.

(Memorandum of dates omitted.)

Circular No. 1153

INSTRUCTIONS UNDER THE ACT OF APRIL 11, 1928

Department of the Interior,
General Land Office,
Washington, May 29, 1928.

The act of April 11, 1928 (45 Stat. 422), entitled "An act authorizing the Secretary of the Interior to sell and patent certain lands in Louisiana and Mississippi, provides:

> That the Secretary of the Interior, in his judgment and discretion, is hereby authorized to sell, in the manner hereinafter provided, any of those lands which he has found or shall hereafter find are public lands of the United States that have accreted to section 14 of township 5 north, range 4 west, Washington meridian, in the State of Mississippi, and to sections 65, 66, 67, and 68 of town-

ship 5 north, range 9 east, Louisiana meridian, in the State of Louisiana, and which are not lawfully appropriated by a qualified settler or entryman or other adverse claimant claiming under the public land laws.

SEC. 2. That the owners of said above-described lots or sections shall have a preferred right to file in the office of the register of the United States land office of the district in which the lands are situated an application to purchase the public lands thus formed by accretion at any time within ninety days from the filing of plats of such accreted area in the United States land office. Every such application must be accompanied with satisfactory proof that the applicant is entitled to such preference right by virtue of the ownership of said above-described lots or sections and that the lands which he applies to purchase are not in the legal possession of any adverse claimant.

SEC. 3. That upon the filing of any application to purchase any lands subject to the operation of this act, together with the required proof, the Secretary of the Interior shall cause the lands described in said application to be appraised, including the timber thereon and the stumpage value of any timber cut or removed by the applicant or his predecessors in interest. Such appraisement shall be exclusive of any increased value resulting from the development or improvement of the land for agricultural purposes by the applicant or his predecessors in interest.

SEC. 4. That an applicant who applies to purchase land under the provisions of this act, in order to be entitled to receive a patent must, within thirty days from receipt of notice of appraisal by the Secretary of the Interior, pay to the register of the United States land office of the district in which the lands are situated the appraised value of the lands, and thereupon patent shall issue to said applicant for such lands as the Secretary of the Interior shall determine that such applicant is entitled to purchase under this act. The proceeds derived by the Government from the sale of lands hereunder shall be covered into the United States Treasury and applied as provided by law for the disposal of the proceeds from the sale of public lands.

SEC. 5. If, at the date of the approval of this act, any of the lots or sections or parts of lots or sections above described are covered by a pending entry on which satisfactory final proof in support thereof has not been submitted, patent based on any application to purchase land subject to the provisions of this act shall be withheld to await the completion of the pending entry. If, upon completion of the pending entry it shall then be found that applicant has shown due compliance with the law under the said pending unperfected entry and his application to purchase is otherwise satisfactory patent on said application to purchase shall then be issued.

SEC. 6. That the Secretary of the Interior is hereby authorized to prescribe all necessary rules and regulations for administering the provisions of this act and determining conflicting claims arising hereunder.

Applications to purchase under this act must be sworn to and may be executed before any officer having a seal and authorized to administer oaths in the State in which the land is situated and must be filed with the commissioner of this office within 90 days from the filing of the official plat of survey.

The applicant must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for and must show by affidavit corroborated by two witnesses that the lands applied for are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant. Abstracts of title covering the lands claimed as the basis of a preference right must be submitted to this office as evidence of ownership. Any such abstracts will be returned to the owners upon request after issuance of patent for the land applied for.

When an application is filed in this office under this act it will be noted upon the records of this office and as soon as practicable thereafter, if everything is found to be regular, will be forwarded to the chief inspector for investigation and appraisement of the land in accordance with the provisions of this act.

When an application is received by the chief inspector he will cause an investigation and appraisement of the land to be made in accordance with the provisions of the act. The inspector making the investigation and appraisement will make a report as to the development or improvement of the land for agricultural purposes, and will estimate the value of the timber thereon, if any, including the stumpage value of any timber cut or removed by the applicant or his predecessors in interest. Such appraisement shall be exclusive of any increased value resulting from the development or improvement of the land for agricultural purposes by the applicant or his predecessors in interest.

If upon consideration of the application in this office, with report and appraisement, it shall be determined that the applicant is entitled to purchase the lands applied for, this office will notify the applicant at once, by registered mail, that he must within 30 days from service of notice deposit with the receiving clerk of this office the appraised price, or he will, without further notice, forfeit all rights under his application.

Upon payment of the appraised price of the land this office will issue notice for publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation, designated by the commissioner of this office, in the vicinity of the land. once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time shall elapse between the date of the last publication and the date of sale to enable the affidavit of the publisher to be filed in this office. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests to the allowance of the applications within the period of publication, otherwise the application may be allowed. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. The commissioner of this office will cause a notice similar to the notice of publication, to be posted in this office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in this office, prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.

Upon submission of satisfactory proof, if no protest or contest is pending final certificate will issue followed by patent.

If any such accreted lands remain after the disposal of the preference right claims provided for by this act, the accreted lands so remaining will be subject to entry by qualified former service men of the World War, under the homestead laws, for a period of 90 days, following the 90-day period provided for by this act, and thereafter by the general public.

Very respectfully,

William Spry, *Commissioner.*

Approved May 29, 1928.

E. C. Finney,
First Assistant Secretary.

MAPS OR PLATS

[See 45 L. D. 648]

CIRCULAR No. 527 [1]

THE FILING OF TOWNSHIP PLATS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 6, 1917.

Registers and Receivers, United States Land Offices.

SIRS: Instructions of October 21, 1885 (4 L. D. 202), relative to the filing of plats of surveys are amended as follows:

When an approved plat of survey of any township or part of a township is transmitted to you by the surveyor general you will not regard such plat as officially received and filed in your office until the following regulations have been complied with:

1. You will at once post a notice in a conspicuous place in your office, specifying the township or part of township that has been surveyed and stating that the plat of survey will be filed in your office on a day to be fixed by you and named in the notice, which shall be not less than 30 days from the date of such notice, and that on and after said day the lands in such township or part of township will be subject to proper disposition. If any of the lands are embraced in any withdrawal, the notice should so state.

2. You will send a copy of such notice to the postmaster in the town in which your office is situated and postmasters of the post offices nearest the land, to the clerk or clerks of courts of record in the town where the land office is located and in the county where the land is situated, and such adjoining county or counties deemed advisable by you.

3. You will also furnish, as a matter of news, copies of the notice to the newspapers published in the town where the land office is situated and in the neighborhood of the land, particularly in the county in which the land is located, and to newspapers known to have a circulation in the vicinity of the land.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

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[1] See Circular No. 935, p. 758.

CIRCULAR No. 935

NOTICES OF FILING OF PLATS AND OPENING OF LANDS TO ENTRY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 14, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Hereafter, in giving public notice relative to:

(*a*) The official filing of plats of surveys under the requirements of circular of October 21, 1885 (4 L. D. 202), as amended by Circular No. 527 of February 6, 1917 (45 L. D. 648);

(*b*) The opening of public or Indian lands to entry, or the restoration to entry of public lands in accordance with the provisions of Circular No. 822 of May 1, 1922, relative to preference right of soldiers, sailors, and marines of the late war, or

(*c*) Where lands are in any manner to be made subject to entry, selection, appropriation, or disposal through the issuance of a public notice,

you will, in addition to observing the existing requirements, send a copy of your notice to the United States surveyor general and chief of field division in whose districts the lands are situated and to the Commissioner of the General Land Office.

The surveyor general and chief of field division will not only assist in disseminating the information thus received, but will also make appropriate use thereof in the discharge of their respective duties as occasion may require.

The foregoing will not relieve registers and receivers from reporting on Form 4–352 when plats of surveys are officially filed in their offices.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

COST OF MAPS AND PLATS

Photolithographic copies of plats of Government surveys, showing land lines and general topography in townships 6 miles square or fractions thereof, scale 2 inches to the mile, comprising the public-land States of Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North and South Dakota, Ohio, Oklahoma, Wisconsin, and the other States west of the Mississippi River, except Texas, may usually be supplied at a cost of 50 cents per copy, in accordance with the act of Congress approved June 5, 1920. Photostat copies (white lines and letters on black background) may be made at a cost of 40 cents per copy only in case photolithographic copies are not available. If certified copies of plats are desired, add 25 cents for each certificate. A single certificate may be made embracing several plats when but one township is involved.

Township plats do not show lands subject to entry; diagrams showing vacant land, if any, are furnished by the registers of the United States district land offices, where the current work of the particular office will permit, at a cost of $1. No county maps are published by the General Land Office.

In specifying township plats desired, applicants should give township and range numbers in order by ranges; the number or name of the meridian; and whether north and east, north and west, south and east, or south and west. All townships in Louisiana west of the Mississippi River are governed by the Louisiana meridian and all other are St. Helena meridian in that State.

Remit by draft, money order, registered letter, or certified personal check, payable to the order of the Commissioner of the General Land Office. If check sent by the General Land Office be returned on a new order, it should be properly indorsed.

There is a general rule requiring prepayment of charges, which does not in any way imply a doubt as to the financial integrity of applicant.

Maps of the public-land States, scale 12 miles to an inch, are sold by the Superintendent of Documents, Government Printing Office, Washington, D. C., at 25 cents each, except that of California, which is printed in two sheets and costs 75 cents, and Michigan, Minnesota, and New Mexico, which cost 35 cents each.

A large wall map of the United States issued by the General Land Office, 63 by 84 inches in size, scale approximately 37 miles to an inch, is sold by the Superintendent of Documents at a cost of $2, mounted on muslin and with roller and hanger attached. This map is also delivered to Congress for free distribution.

A circular giving prices of post-route maps may be obtained from the chief disbursing clerk, Post Office Department, Washington, D. C.

Photostat copies of the field notes of the public-land surveys can be obtained from the Commissioner, General Land Office, for 15 cents per page.

MILITARY AND NAVAL SERVICE

[Reported, 46 L. D. 174]

Circular No. 564

MILITARY SERVICE BY HOMESTEADERS DURING WAR—ACT OF JULY 28, 1917 (40 STAT. 248)

Instructions

Department of the Interior,
General Land Office,
Washington, D. C., August 22, 1917.

Registers and Receivers, United States Land Offices:

Sirs: The act of July 28, 1917 (40 Stat. 248), provides:

> That any settler upon the public lands of the United States, or any entryman whose application has been allowed, or any person who has made application for public lands which thereafter may be allowed under the homestead laws, who, after such settlement, entry, or application, enlists or is actually engaged in the military or naval service of the United States as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, shall, in the administration of the homestead laws, have his services therein construed to be equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon; and hereafter no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, entryman, or person unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases hereinafter initiated that the alleged absence from the land was not due to his employment in such military or naval service; that if he shall be discharged on account of wounds received or disability incurred in the line of duty, then the term of his enlistment shall be deducted from the required length of residence, without reference to the time of actual service: *Provided*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year.
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> Sec. 2. That any settler upon the public lands of the United States, or any entryman whose application has been allowed, or any person who has made application for public lands which thereafter may be allowed under the homestead laws, who dies while actually engaged in the military or naval service of the United States, as a private soldier, officer, seaman, marine, national guardsman, or member of any other organization for offense or defense authorized by Congress during any war in which the United States may be engaged, then his widow, if unmarried, or in case of her death or marriage, his minor orphan children, or his or their legal representatives, may proceed forthwith to make final proof upon such entry or application thereafter allowed, and shall be entitled to receive Government patent for such land; and that the death of such soldier while so engaged in the service of the United States shall, in the administration of the homestead laws, be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead.

WHO ENTITLED TO CREDIT FOR MILITARY SERVICE

2. The present war began, as to the United States, April 6, 1917. The special privileges given by the act accrue, as to each homestead claimant, on that date if he was already in the United States service; otherwise from the time, after that date, when he enlisted or shall enlist in the United States Army, Navy, or Marine Corps, or when, as a member of any other organization for offense or defense authorized by Congress, he was or shall be mustered into or engaged in the military or naval service of the United States. The benefits of the act do not extend to any persons not engaged in the service for offense or defense as set forth therein. In these instructions the word "soldier" will be used to indicate any person coming within the purview of the act.

3. The benefits of the act are conferred upon a person who, before going into the service, had actually made a homestead entry, had effected and maintained a valid settlement upon a tract properly subject to entry by him, or had filed an allowable application for the land. This last includes one who had filed a petition for designation under the enlarged homestead act or the stock-raising homestead law, accompanied by an application to enter, provided his entry be allowed pursuant to a designation made while the war lasts, and credit will be given for the service of such soldier had after the date of the designation. The act does not protect any entry from cancellation on account of defaults of the homesteader occurring before he went into the service.

PERIOD OF CREDIT ALLOWED—RESIDENCE REQUIRED

4. A soldier is entitled to credit on the residence and cultivation prescribed by the homestead law for the time of his service during the war; but one whose discharge is on account of wounds received or disability incurred in the line of duty is entitled to credit for the entire term of his enlistment, without reference to the time of actual service. However, the homesteader will be required to show at least one year's residence and cultivation in connection with his entry, regardless of the length of his service or the fact that he has been discharged on one of the grounds indicated. During each year's residence which he may be required to show he is entitled to the five months' absence privilege like other homesteaders.

RIGHTS OF WIDOW, MINOR CHILDREN, HEIRS, OR DEVISEES

5. If the soldier dies while actually engaged in the military or naval service of the United States, his widow, if unmarried, may at once submit proof on his entry, if one has been made; if there is no widow, or she has remarried, his minor children may, through their guardian, thus submit the proof; and if he leaves no widow, or the widow has remarried, and if all of his children, if any there be, are not minors, then proof may be submitted by his heirs in general or by his devisees, as the case may be.

In the event the soldier had not made entry for the land claimed, then the right to make entry therefor and submit proof accrues to the parties indicated at once or as soon as the land becomes subject to entry. In such proof it will be necessary only to prove the identity of the entryman, settler, or applicant with the soldier; that he died while actually engaged in the service, and that the person or persons submitting proof bear to him one of the relations mentioned. When the claim is based on settlement only, the facts with respect thereto must be shown, otherwise the manner and method of submitting final proof will follow the usual practice.

NO CREDIT WHERE CLAIM INITIATED AFTER ENTERING SERVICE

6. Neither this act nor any other legislation contains a provision by which a person who initiates a homestead claim, by filing application or by making settlement on public land, after entering the Army, Navy, or Marine Corps, or other organization in the present war, may obtain credit in connection therewith on account of his service.

CONTEST—MUST PROVE ABSENCE NOT DUE TO MILITARY SERVICE

7. No application hereafter filed to contest a homestead entry on the ground of abandonment will be allowed by you unless there is an allegation therein that the entryman's alleged absence from the land was not due to his employment in the Army, Navy, or Marine Corps, or other organization described in the act. No allegation of abandonment will be sustained against a homestead settler in connection with a contest initiated after April 6, 1917, unless it has been proved at the hearing, if one be had, that the entryman's alleged absence from the land was not due to his employment in military or naval service as indicated.

NOTICE TO LAND DEPARTMENT OF ENTERING MILITARY SERVICE

8. While the law thus protects entrymen engaged in the military service from contests against their entries on the ground of abandonment, and it is not obligatory upon them to advise the Land Department as to their reasons for leaving their claims, it is advisable that each shall notify the local United States land office of the facts in that regard.

FINAL PROOF BY ENTRYMAN IN MILITARY SERVICE

9. The entryman, if desirous of submitting proof, may give his own testimony before any officer authorized to administer oaths and having an official seal at the place where he is then stationed, but the testimony of the witnesses must be taken within the proper county or land district, and publication and posting of notice must be duly made. It is not obligatory upon the homesteader thus to submit the proof, though the period given by law for its submission be about to expire; he will be allowed a reasonable time after his discharge for that purpose.

SETTLER ON UNSURVEYED LAND—NOTICE OF ENLISTMENT

10. Following the practice under the provisions of the act of July 3, 1916 (39 Stat. 341), any qualified person who in good faith makes

settlement upon and improves unsurveyed, unreserved, unappropriated public land of the United States with intention to enter it under the homestead laws after survey thereof, who has plainly marked on the ground the exterior boundaries of the tract claimed by him, and who, as a soldier, becomes entitled to the benefits of the act of July 28, 1917, may file at the local United States land office a notice of his enlistment and that he claims the benefits of that act. A tract is regarded as unsurveyed within the meaning of the homestead laws until a survey has been accepted and the plat thereof filed.

11. You will give the current serial numbers to such notices, make due record of them on your serial-number registers, with a plain notation at the top of the page that no entry has been made, and will forward the notices with your monthly returns. You will also make note of such papers on your tract books where the description of the land is given therein by section, township, range, and legal subdivisions.

CIRCULAR NO. 506 NOT SUPERSEDED

12. These instructions do not supersede those of September 27, 1916 (Circular 506,[a] 45 L. D. 488), relating to special privileges accorded homestead settlers on account of military service rendered in connection with operations in Mexico or along the border thereof or in mobilization camps elsewhere.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 46 L. D. 232]

CIRCULAR NO. 573

EXECUTION OF AFFIDAVITS BEFORE COMMANDING OFFICER—ACT OF OCTOBER 6, 1917

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 19, 1917.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of October 6, 1917 (40 Stat. 391), which reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That during the continuance of the present war with Germany, and until his discharge from service, any man serving in the armed forces of the United States who, prior to the beginning of his services, was a settler, an applicant, or entryman under the land laws of the United States, or who has, prior to enlistment, filed a contest with the view of exercising preference right of entry therefor, may make any affidavit required by law

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[a] Circular No. 506 is not carried in this publication. Subsequent instructions are contained in Circular No. 302, p. 792, and Circular No. 949, p. 789.

or regulation of the department, affecting such application, entry, or contest, or necessary to the making of entry in the case of the successful termination of such contest awarding him preference right of entry, before his commanding officer as provided in section twenty-two hundred and ninety-three of the Revised Statutes of the United States, which affidavits shall be as binding in law and with like penalties as if taken before the register of the United States land office.

2. Since the enactment of section 2293, United States Revised Statutes, an applicant for homestead entry has been permitted to execute his application before his commanding officer where it is shown that his wife or minor child is residing on the land in question. The law is not changed by the present legislation and an application may, under those circumstances, be thus executed, even though the homestead claim was not initiated, by settlement or otherwise, before the applicant's entrance into the military service. In such cases the nonmineral affidavit may be executed by the wife or by a minor child if he is of such age as to intelligently make the required oath. However, if the claim was not initiated prior to the man's enlistment no credit may be given on account of the period of his service.

3. The present act extends the privilege of executing an affidavit in connection with a claim under any of the public-land laws before the party's commanding officer only to such persons as had initiated their claims prior to enlistment. If this had not been done by the filing of an application for the land or of a contest against a pending entry therefor, and the claim is based only on an alleged settlement under the homestead laws or on possession held pursuant to the desert-land laws, he must, in the first affidavit executed by him under the provisions of this act, set forth the facts showing its initiation prior to his entrance into the service.

4. In the case of voluntary entrance of privates into the Army, Navy, or Marine Corps, or appointment of officers (including those appointed from the Officers' Training Corps), the enlistment mentioned in the act dates from that time; in the case of a person enlisted in the Naval Reserve, from the time he is called into active service; in the case of a drafted man, from the time he is mustered into service; in the case of members of the Federalized National Guard, from the time they are mustered into the United States service, and the act has no application to other State troops; in the case of members of the Red Cross, only from the time they actually become identified with, and a part of, the military or naval forces of the United States, and the act does not apply to other members of the Red Cross.

5. The provisions of the act cover all affidavits required to be executed by a claimant under the public land laws in connection with final proof on his claim, but the testimony of any witnesses required by law must be given in the manner and at the place indicated by general statutory provisions. The published and posted notice of intention to submit proof must name the time and place where the witnesses will testify, and must contain a statement that the claimant himself will testify before his commanding officer pursuant to the provisions of this act, but no attempt need be made to indicate the time or place where claimant's testimony will be submitted. In such cases you will wait a reasonable time for the arrival of the

claimant's testimony, and if this does not come to hand you will forward to this office for consideration all papers received by you.

6. The term "commanding officer," used in the act, signifies the officer who commands the smallest unit in which the party serves. Often the matter of determining the proper officer will depend upon the circumstances of the case, but it may be mentioned, by way of illustration, that the captain of a company would primarily be regarded as such officer, where the party is serving in the fighting forces of the Army.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 46 L. D. 239]

CIRCULAR NO. 574 [1]

PERSONS IN MILITARY SERVICE—INSTALLMENT PAYMENTS ON ENTRIES OF CEDED INDIAN LANDS—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 20, 1917.

Registers and Receivers, United States Land Offices.

SIRS: Where a person has entered or shall enter land formerly embraced in an Indian reservation, for which he is required to pay a certain price per acre for the benefit of the Indians, and thereafter has entered, or shall enter, the military or naval service of the United States, the entry will not be canceled on account of the failure of the soldier or sailor to make the payments of any amounts falling due during the term of his enlistment, but it will be held suspended, pending consideration by Congress of legislation designed to extend the time for such payments beyond the period of military service or the existing war.

2. The question whether such entrymen shall be required to pay interest, except as required by existing laws, will depend on the terms of the legislation which Congress may enact.

3. In cases where the entryman has filed notice of his entrance into the military or naval service as permitted by paragraph 8 of the circular of instructions of August 22, 1917, issued under the act of July 28, 1917, you will nevertheless call upon him for the payment when due, but will in your notice inform him that if he is unable to pay on account of his employment in the military service he should advise you to that effect. In all cases where there is response by him, or on his behalf, that he has entered the military or naval service, you will forward the papers to this office with your report.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

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[1] See Circular No. 647, p. 774.

[Reported, 46 L. D. 279]

CIRCULAR NO. 585[2]

PAYMENTS ON ENTRIES OF LANDS IN ABANDONED MILITARY RESERVATIONS, MADE BY PERSONS IN MILITARY OR NAVAL SERVICE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 19, 1918.

Registers and Receivers, United States Land Offices:

Where a person has entered or shall enter land embraced in an abandoned military reservation, for which he is required to pay a certain price per acre, and thereafter has entered or shall enter the military or naval service of the United States, the entry will not be canceled on account of the failure of the soldier or sailor to make the payments of any amounts falling due during the term of his enlistment, but it will be held suspended pending consideration by Congress of legislation designed to extend the time for such payments beyond the period of military service or the existing war.

The question whether such entryman shall be required to pay interest, except as required by existing laws, will depend on the terms of the legislation which Congress may enact.

In cases where the entryman has filed notice of his entrance into the military or naval service, as permitted by paragraph 8 of the circular of instructions of August 22, 1917, issued under the act of July 28, 1917 (46 L. D. 174), you will, nevertheless, call upon him for the payment, when due, but will in your notice inform him that if he is unable to pay, on account of his employment in the military or naval service, he should advise you to that effect. In all cases where there is response by him or on his behalf that he has entered the military or naval service, you will forward the papers to this office with your report.

C. M. BRUCE, *Acting Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 46 L. D. 294]

CIRCULAR NO. 590

MILITARY SERVICE OF DESERT-LAND ENTRYMEN DURING THE WAR WITH GERMANY—ACT OF AUGUST 7, 1917 (40 STAT 250)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 18, 1918.

Registers and Receivers, United States Land Offices.

SIRS: Subjoined is a copy of the act of August 7, 1917 (40 Stat. 250), entitled " An act for the protection of desert-land entrymen who enter the military or naval service of the United States in time of war," the provisions of which operate to protect desert-land claims held by persons serving in the military or naval service of the United States during the present war with Germany from contest and cancellation for failure to make the required yearly expenditures, or to effect reclamation within the regular statutory period.

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[2] See Circular No. 647, p. 774.

Persons entitled to credit for military service.

1. The present war with Germany began, as to the United States, April 6, 1917, and to entitle a claimant to the benefits of the act it must be established that he was, at the outbreak of the war, serving as an officer or enlisted man in the Army, Navy, or Marine Corps, or Organized Militia of the United States, or has since entered such service.

The benefits of the act are conferred only upon any officer or enlisted man who, before entering the service, had actually made a desert-land entry, or had acquired such an entry by assignment, or had filed an allowable application to make a desert-land entry, or has acquired a preference right to unsurveyed land under the act of March 28, 1908, (35 Stat. 52). Under the provisions of the act, the claimant's rights are protected as against contest and cancellation upon the ground of failure to make the required yearly expenditures or to effect reclamation during the period of his service and for six months after its termination, and in effect operates to extend the regular statutory time provided for submitting yearly and final proofs for a period equal to the claimant's service. There is, of course, no waiver of ultimate compliance with the law's requirements of expenditure and reclamation, but, on the contrary, such compliance must be effected and proofs thereof duly submitted within the extended period of time granted by this statute, as above stated.

The act does not protect an entry on account of defaults occurring before the claimant entered the service.

Notice of muster into the service.

2. In order to avail himself of the benefits of this act, the claimant must have filed in the local land office of the district wherein the claim is situated, within six months after its passage a notice of his muster into the service and of his desire to hold the claim under its provisions; or if his muster into the service does not antedate the passage of the act, then the notice must be filed within six months after such muster. For purposes of identification and verification, the notice should set forth the date of muster into the service and the military or naval organization to which the claimant is attached, together with his service in full.

You will make a record of all notices claiming the benefits of the act and transmit them with your monthly returns.

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

(Act omitted.)

[Reported, 46 L. D. 383]

Circular No. 600[3]

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT (40 STAT. 440, 448)—INSTRUCTIONS

Department of the Interior,
General Land Office,
Washington, D. C., May 16, 1918.

Registers and Receivers, United States Land Offices.

Sirs: Section 501 of the act of March 8, 1918 (40 Stat. 440, 448), known as the soldiers' and sailors' civil relief act, provides:

> That no right to any public lands initiated or acquired prior to entering military service by any person under the homestead laws, the desert-land laws, the mining-land laws, or any other laws of the United States, shall be forfeited or prejudiced by reason of his absence from such land, or of his failure to perform any work or make any improvements thereon, or to do any other act required by any such law during the period of such service. Nothing in this section contained shall be construed to deprive a person in military service or his heirs or devisees of any benefits to which he or they may be entitled under the act entitled "An act for the relief of homestead entrymen or settlers who enter the military or naval service of the United States in time of war," approved July twenty-eighth, nineteen hundred and seventeen; the act entitled "An act for the protection of desert-land entrymen who enter the military or naval service of the United States in time of war," approved August seventh, nineteen hundred and seventeen; the act entitled "An act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products," approved August tenth, nineteen hundred and seventeen; the joint resolution "To relieve the owners of mining claims who have been mustered into the military or naval service of the United States as officers or enlisted men from performing assessment work during the term of such service," approved July seventeenth, nineteen hundred and seventeen; or any other act or resolution of Congress: *Provided*, That nothing in this section contained shall be construed to limit or affect the right of a person in the military service to take any action during his term of service that may be authorized by law, or the regulations of the Interior Department thereunder, for the perfection, defense, or further assertion of rights initiated prior to the date of entering military service, and it shall be lawful for any person while in military service to make any affidavit or submit any proof that may be required by law, or the practice of the General Land Office in connection with the entry, perfection, defense, or further assertion of any rights initiated prior to entering military service, before the officer in immediate command and holding a commission in the branch of the service in which the party is engaged, which affidavits shall be as binding in law and with like penalties as if taken before the register of the United States land office.

You will observe that the purpose of said section is generally to enlarge, but in no respect to limit, the benefits conferred upon persons in the military or naval service in connection with public-land claims by the acts and resolution therein mentioned, or any other act or resolution of Congress. No attempt will be made to issue detailed instructions to govern the many situations which will arise under the several public-land laws and this act, though it may be said that the general purpose of the act is to relieve claimants, under the conditions stated, from the penalty of forfeiture on the ground of their failure to do any act required by the law under which their claims are made during the period of their military service. The department has already had occasion to hold that the act has effect to suspend payments by those in the military or naval service in connection with homestead entries for ceded Indian lands, and for lands within reclamation projects.

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[3] See Circular No. 647, p. 774.

3. With respect to payments on homestead entries for ceded Indian lands, by the instructions of November 20, 1917 (Circular No. 574), you were advised that where a person entered land formerly embraced in an Indian reservation for which payment of a certain price per acre for the benefit of the Indians was required, and thereafter entered the military or naval service of the United States, the entry would not be canceled on account of the failure of the soldier or sailor to make payment of any amounts falling due during the term of his enlistment, but such entry would be held suspended, pending consideration by Congress of legislation designed to extend the time for such payments during the period of military service or the existing war. As said act of March 8, 1918, operates to grant such extension, no entries will be canceled upon the ground indicated until the expiration of six months after the end of the war and after the discharge of the entryman from the service, unless such discharge shall have occurred at an earlier date, in which case said six-month period will begin to run from the time of his discharge.

4. In cases where the entryman has filed notice of his entrance into the military or naval service, as permitted by paragraph 8 of the circular of instructions of August 22, 1917, issued under the act of July 28, 1917, you will nevertheless call upon him for the payment when due, but will in your notice inform him that he is entitled to the benefits of said act of March 8, 1918, and need not make such payment while in the service unless he wishes to do so. In all cases where there is response by him or on his behalf that he has entered the military or naval service you will forward the papers to this office with your report.

5. The same procedure should be followed in connection with payments required under other classes of entries.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 46 L. D. 451]

Circular No. 622

SOLDIERS UNDER 21 YEARS OF AGE—SPECIAL PRIVILEGES UNDER PUBLIC LAND LAWS—ACT OF AUGUST 31, 1918, AND RESOLUTION OF SEPTEMBER 13, 1918—INSTRUCTIONS

Department of the Interior,
General Land Office,
Washington, D. C., October 9, 1918.

Registers and Receivers, United States Land Offices.

Sirs: Section 8 of the act of Congress of August 31, 1918 (40 Stat. 955), reads as follows:

> Sec. 8. That any person, under the age of twenty-one, who has served or shall hereafter serve in the Army of the United States during the present

> emergency, shall be entitled to the same rights under the homestead and other land and mineral entry laws, general or special, as those over twenty-one years of age now possess under said laws: *Provided*, That any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service: *Provided further*, That applications for entry may be verified before any officer in the United States, or any foreign country, authorized to administer oaths by the laws of the State or Territory in which the land may be situated.

The joint resolution of Congress (40 Stat. 960), approved September 13, 1918, and referring to the above provision, reads as follows:

> That no relinquishment of any public-land entry made under or by authority of section eight of the act of the Sixty-fifth Congress, second session, entitled "An act amending the act entitled 'An act to authorize the President to increase temporarily the Military Establishment of the United States,' approved May eighteenth, nineteen hundred and seventeen," shall be valid or effective for any purpose unless executed after the entryman shall have actually resided upon and cultivated the land, in the case of a homestead entry, for at least six months, and in the case of an entry made under other than the homestead laws, after the entryman shall have complied with the provisions of the applicable law for at least one year.
>
> Any person, firm, or corporation soliciting or dealing with the relinquishment of such claim or entry prior to the completion of compliance with the applicable law and with this resolution, and who or which solicits, demands, or receives or accepts any fee or compensation for locating, filing, or securing the claims or entries for persons entitled to the benefits of said section shall, upon conviction, be fined not to exceed $1,000 or imprisoned for not exceeding two years, or both.

2. Said section 8 of the act of August 31, 1918, confers the right of entry under any of the agricultural or mineral public-land laws upon persons under the age of 21 who have served, or shall hereafter serve, in the Army of the United States during the present war, in the same manner as they could have made entry if over that age. This right is conferred only upon persons who have been actually mustered into the service and who are under 21 years of age at the time their applications are executed.

A drafted man is regarded as serving in the Army from the time he reports for entrainment; a man in the Officers' Reserve Training Corps from the time of his admission.

This department is of the opinion that the expression "the Army of the United States," as used in section 8 of the act, includes the Navy and Marine Corps, and that construction will stand unless Congress shall otherwise direct.

3. An application for entry by a person coming within the meaning of the law may be executed at any place where he is located, whether it be in a State, Territory, or District of the United States, or in a foreign country. It may be executed before any officer whose authority to administer oaths is recognized by the laws of the State or Territory in which the land sought is situated. These laws differ, and it will not be attempted here to give a synopsis of all of them. An examination of the State laws leads to the conclusion that they all recognize affidavits executed in any part of the United States before a notary public or the clerk of a court of record, and those executed outside of this country before a notary or before any diplomatic or consular officer of the United States.

4. An applicant claiming the benefits of said section must execute an application for entry on the ordinary prescribed form; but, where he has not examined the tract sought, there should be omitted from

the form so much as refers to personal examination of, or acquaintance with, the tract, and recites the applicant's knowledge as to its character (nonmineral, nonirrigable, etc.). For example, there should be stricken from an application for entry under the enlarged homestead act all that part of the form beginning with the words "that I am well acquainted with the character of the land" and ending with "it is not susceptible of successful irrigation," etc.

In such cases there must accompany the application an affidavit setting forth the facts as to the character of the land, executed by some other person who states that he is himself familiar therewith; but this will not be received as sufficient unless the affiant deposes that his statement is made at the request of the applicant; that he has not solicited, demanded, received, accepted, or been promised, nor intends to receive, a fee or compensation of any nature for his assistance in securing allowance of the claim or entry.

5. The act does not exempt an applicant from payment of the regular fee and commissions chargeable to other applicants; as to that matter, you will treat the filings like oher applications.

For the information of prospective applicants it may be stated that the fee and commissions on a 320-acre entry under the enlarged homestead act amount to $22 in most of the States, or to $34 where the lands are within the granted limits of Government-aided railroads; the amount due on a stock-raising homestead application for 640 acres is $34, or $58 under the circumstances last mentioned.

6. A person making a homestead entry under this act is entitled to the benefits of the act of Congress of July 28, 1917 (40 Stat. 248). That act provides that a homesteader shall have his military services construed as equivalent to residence and cultivation for the same length of time upon the tract entered, and that if he be discharged on account of wounds received or disability incurred in the line of duty the entire term of his enlistment shall be thus counted; also, that no patent shall issue to any homesteader who has not resided upon, improved, and cultivated the land for at least one year, but he is entitled to the five months' absence privilege like other homesteaders during each year's residence, which he may be required to show. It provides, further, that if a homesteader dies while actually engaged in the military or naval service of the United States his widow, if unmarried, or (if she be married) his minor orphan children, or his or their legal representatives may forthwith make proof upon his entry.

A person making a desert-land entry under this act is entitled to the benefits of the act of Congress of August 7, 1917 (40 Stat. 250). Therefore, such an entry will not be subject to cancellation for failure to expend $1 per acre in improvements upon the claim, or to effect its reclamation, during the period of his service and until six months thereafter, and the time for complying with the law is extended for a period equal to that of said service. This relief is conditioned, however, upon his filing in the local land office, within six months after he is mustered into the service, a notice of his muster in and of his desire to hold the desert claim under said act.

7. The soldier will not be required to establish residence upon the land in his homestead entry until six months after his discharge from military service. No contest against the entry will lie on the ground of failure to establish residence until the expiration of that period,

and the time elapsing before such discharge from the service will not be counted on the statutory life of the entry.

8. The joint resolution above set forth provides for imposition of a fine of not exceeding $1,000 or imprisonment for not exceeding two years, or both, upon any person, firm, or corporation which solicits, demands, receives, or accepts any fee or compensation (whether it be in money or in other value) for locating, filing, or securing any claim or entry for any person entitled to the benefits of section 8 of the act of August 31, 1918. It is desired that if there be violations of this prohibition they be promptly brought to the attention of the General Land Office or the Chief of Field Division, to the end that immediate steps may be taken to stop such illegal practices and to bring the offenders to justice. Moreover, the attention of the soldiers is very strongly directed to the fact that any one of them who pays or promises compensation of any kind for securing an entry, even though it be merely by the grant of grazing privileges, will be conniving at the breach of a law which Congress enacted for the protection not only of the soldiers but of the general interests in the public domain. As above shown, it will frequently be necessary for some person to execute, on behalf of the applicant, an affidavit regarding the character of the land; but this must in all cases be done by a relative or by some other person who is willing to afford the service without compensation. The clear purpose of the act is to give soldiers under the age of 21 an opportunity to hold a homestead or other land claim for their own personal benefit, but not for speculation on the part either of themselves or of others.

9. The resolution provides that no relinquishment of an entry made under the act in question shall be valid unless executed after the entryman shall have resided upon and cultivated the land covered by a homestead entry for at least six months; or, as to other classes of claims, until he shall have complied with the provisions of the applicable law for at least one year. Moreover, it provides that any person, firm, or corporation soliciting or dealing with the relinquishment of such claim or entry, prior to the completion of one year's compliance with the applicable law and with the resolution, shall be subject to the punishments above mentioned. Accordingly, the registers and receivers are instructed not to make on their records any notation regarding receipt of a relinquishment of an entry made under the act of August 31, 1918, unless it shall be made to appear through the affidavit of the entryman, corroborated by those of two witnesses, that the above conditions have been complied with; and soldiers are warned not to execute relinquishments of their entries prior to the arrival of the time indicated.

In case of death of the entryman the entry will be subject to relinquishment by his widow, heirs, or devisees, as the case may be, under the following conditions:

(*a*) If a homestead, not until after the expiration of six months from the date of his death, if he had not established residence on the land, or at any time after the expiration of six months from the date residence was established by him.

(*b*) If any other class of entry, not until after the applicable law has been complied with for at least one year.

As in the case of relinquishment by the entryman, such relinquishments must be supported by affidavit, duly corroborated, establishing the material facts.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved:

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 47 L. D. 191]

Circular No. 647

INSTRUCTIONS AS TO INSTALLMENT PAYMENTS REQUIRED IN CONNECTION WITH HOMESTEAD AND OTHER ENTRIES AFTER PERIOD OF MILITARY OR NAVAL SERVICE

Department of the Interior,
General Land Office,
Washington, D. C., June 9, 1919.

Registers and Receivers, United States Land Offices.

Sirs: Payments required in connection with entries of ceded Indian lands and other entries by those in the military or naval service were suspended during the period of such service by section 501, of the act of March 8, 1918 (40 Stat. 440, 448).

No direction was given in Circular No. 600, issued under the said section 501, as to when the said suspended payments must be paid, other than the direction that—

> * * * no entries will be canceled upon the ground indicated (nonpayment of sums due) until the expiration of six months after the end of the war and after the discharge of the entryman from the service unless such discharge shall have occurred at an earlier date, in which case said six-months' period will begin to run from the time of his discharge.

The period of the military or naval service should not be considered a part of the aggregate period of time originally allowed for the completion of installment payments, and the time for making such payments should be appropriately extended. Where the duration of the military or naval service is one year or less, the time of payment of each installment maturing during or after the term of the military or naval service, under the law under which the entry was made, will be extended for one year; where the military or naval service is between one and two years, the extension will be for two years; and similar extensions will be granted for longer terms of military or naval service. The payments so extended will be due upon the same day of the year as now fixed, and no interest will be charged during the period of the suspension of any payment.

As to entries in reclamation projects, see Circular No. 820, dated May 16, 1919, issued by the United States Reclamation Service.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 47 L. D. 257]

CIRCULAR NO. 656

DISCHARGED SOLDIERS AND SAILORS—TIME TO RETURN TO HOMESTEADS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 10, 1919.

Registers and Receivers, United States Land Offices.

SIRS: The act of July 28, 1917 (40 Stat. 248), provides that, in connection with homestead claims, initiated prior to entering the service, the military or naval service of the claimant shall be "equivalent to all intents and purposes to residence and cultivation for the same length of time upon the tract entered or settled upon." In view of this provision, the soldier may, promptly upon his discharge, file in the United States land office in which his entry was made notice of his intention to take the five months' absence allowed in each residence year (or such lesser absence as he may be entitled to in that residence year); such period to be counted as residence and a contest on the ground of abandonment will not be permitted until the expiration of six months in addition to the absence taken under such notice.

Under this ruling, where the discharge occurs 5 months or more before the end of the residence year and proper notice is given, the entry will be protected from contest for eleven months after his discharge.

The residence years referred to in this circular are computed in periods of 12 months each, dating from the soldier's enlistment or entrance into the service, or from the date he established residence upon the land if he did so prior to entering the service.

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 48 L. D. 54]

CIRCULAR NO. 745

PROOFS ON HOMESTEADS BY INCAPACITATED SOLDIERS—ACT OF MARCH 1, 1921 (41 STAT. 1202)—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 2, 1921.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of March 1, 1921 (41 Stat. 1202), which provides:

> That any settler or entryman under the homestead laws of the United States, who, after settlement, application, or entry and prior to November 11, 1918,

enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to service is unable to return to the land, may make proof, without further residence, improvement, or cultivation, at such time and place as may be authorized by the Secretary of the Interior, and receive patent to the land by him so entered or settled upon: *Provided,* That no such patent shall issue prior to the survey of the land.

2. The benefits of this act extend to persons who, prior to November 11, 1918, and during the war with Germany, were actually engaged in the United States Army, Navy, or Marine Corps, regardless of the dates of their enlistments, provided they entered the service after making settlement upon the land claimed or after filing an allowable application for entry thereof.

3. If the land involved be unsurveyed, and entry be not yet allowed, the proof may nevertheless be submitted and accepted, the current serial number being given the case; but final certificate will not issue unless and until all moneys properly due shall have been paid and entry by the soldier shall have been allowed, according to an approved survey.

4. Notice of intention to submit proof must be given in the usual manner by posting and publication; and, in case of unsurveyed land, affidavit evidence must be filed, showing posting of the notice in a conspicuous place on the land.

5. The proof shall consist (*a*) of affidavit of the homesteader (taken before any officer at any place who is authorized to administer oaths and who uses an official seal), showing that he is unable to return to the land on account of physical incapacity due to service in the United States Army, Navy, or Marine Corps during the war with Germany, and describing the nature and extent of such disability; (*b*) of the testimony of two witnesses taken in similar manner corroborating the statements in that regard and of these witnesses at least one must be a practicing physician; (*c*) of the copy of his discharge from the Army, Navy, or Marine Corps, or an affidavit showing all the facts regarding his service and discharge. In each case the facts will be verified so far as possible from the records of the War Department.

Where no application for entry had been filed prior to claimant's entrance into the service and the benefits of the act are claimed on account of settlement before the beginning of his service, the proof must also include the affidavit of the soldier showing that he had resided upon the land in a habitable house before his entrance into the service, and, besides the other witnesses, there must be the testimony of two witnesses taken in the usual manner in the county or land district in which the land is situated, showing the facts as to claimant's compliance with the law before entrance into the service.

6. Where the proof appears satisfactory and entry for the land has already been allowed, the register and receiver will issue final certificate, provided the proper sums are paid. In cases where entry has not yet been allowed, all the papers will be forwarded to the General Land Office for consideration.

Very respectfully,

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

[Reported, 48 L. D. 78]

CIRCULAR No. 750

PUBLIC RESOLUTION NO. 64, APPROVED MARCH 3, 1921—WAR TERMINATED TO CERTAIN INTENTS—INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 16, 1921.

Registers and Receivers, United States Land Offices.

SIRS: Public resolution No. 64, approved March 3, 1921, provides that in the interpretation of any provision relating to the termination of " the present war " or of " the present or existing emergency," the date of the resolution shall be treated as the date of the termination of the war and emergency. Certain exceptions are made but these do not appear to include any public land matters.

2. Attention is invited to the following statutes affected by this legislation:

(*a*) The act of October 6, 1917 (40 Stat. 391), relating to execution of affidavits before the commanding officer of a public land claimant.

(*b*) The act of February 25, 1919 (40 Stat. 1161), relating to the credit accorded a soldier, sailor, or marine, in connection with a homestead claim on account of military service.

(*c*) [4] The act of July 28, 1917 (40 Stat. 248), giving credit for military service after initiation of a homestead entry and requiring certain allegations to be made in contest affidavits. Notwithstanding the present legislation, an affidavit of contest on the ground of abandonment must negative the fact that the homesteader is in the military service pursuant to an enlistment antedating March 3, 1921; also the fact that any part of the entryman's alleged absence from the land before that date was due to employment in the Army, Navy, or Marine Corps or other organization described in the act of July 28, 1917. Proof at the hearing must cover these points.

(*d*) The soldiers' and sailors' civil relief act of March 8, 1918 (40 Stat. 440). To all intents and purposes within the meaning of this act, the war terminated March 3, 1921; but this termination does not affect any extension of time for payment of installments of the price of land to which a person had already become entitled under rules and regulations heretofore issued.

(*e*) The act of August 7, 1917 (40 Stat. 250), granting further time to soldiers to fulfill requirements on desert land entries.

(*f*) Section 8 of the act of August 31, 1918 (40 Stat. 955), relating to entries by persons under 21 years of age, who were in the military service during the war.

(*g*) The farm labor leave act of December 20, 1917 (40 Stat. 430). The war ended to all intents and purposes within the meaning of this act on March 3, 1921.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

E. C. FINNEY,
First Assistant Secretary.

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[4] Modified by Circular No. 949, p. 789.

[Reported, 48 L. D. 166]

CIRCULAR No. 767 [5]

AMENDMENT—DEFECTIVE CONTEST AFFIDAVITS, MILITARY SERVICE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 2, 1921.

Registers and Receivers, United States Land Offices.

SIRS: The act of July 28, 1917, provides in part as follows:

> Hereafter, no contest shall be initiated on the ground of abandonment, nor allegation of abandonment sustained against any such settler, entryman, or person unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases hereinafter initiated that the alleged absence from the land was not due to his employment in such military or naval service.

The requirement, that in all contests hereafter initiated it shall be alleged in a preliminary affidavit that the absence from the land was not due to military or naval service, is mandatory according to the holding of the department on February 17, 1921, in Carrel *v.* Thrall (Lewistown 040803). In view thereof you will examine carefully all affidavits of contest filed in your office and should the allegation as to military service of the contestee be not in conformity with the statute, you will call attention to that fact and permit the contest affidavit to be amended so as to cure the defect, but should such amendment not be filed within the time allowed for that purpose, you will reject same subject to the right of appeal.

If, however, another contest has been filed in the meantime, fully complying with the law, the amended affidavit must be considered as junior to the other contest.

These instructions do not modify the instructions contained in Circular 750, approved April 16, 1921.

Very respectfully,

WILLIAM SPRY,
Commissioner.

Approved August 2, 1921.

E. C. FINNEY,
First Assistant Secretary.

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[5] See Circular No. 949, p. 789.

[Reported, 49 L. D. 1]

CIRCULAR NO. 822[6]

INSTRUCTIONS UNDER HOUSE JOINT RESOLUTION NO. 30, APPROVED JANUARY 21, 1922, PUBLIC RESOLUTION NO. 36, AMENDING JOINT RESOLUTION OF FEBRUARY 14, 1920 (41 STAT. 434), GIVING TO DISCHARGED SOLDIERS, SAILORS, AND MARINES A PREFERRED RIGHT OF HOMESTEAD OR DESERT LAND ENTRY

CIRCULARS 678 AND 803 SUPERSEDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 1, 1922.

Registers and Receivers, United States Land Offices.

SIRS: House Joint Resolution No. 30, approved January 21, 1922 (42 Stat. 358), amended joint resolution of February 14, 1920 (41 Stat. 434), to read as follows:

> That hereafter, for the period of ten years following the passage of this act, on the opening of public or Indian lands to entry, or the restoration to entry of public lands theretofore withdrawn from entry, such opening or restoration shall, in the order therefor, provide for a period of not less than ninety days before the general opening of such lands to disposal in which officers, soldiers, sailors, or marines who have served in the Army or Navy of the United States in the war with Germany and been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve shall have a preferred right of entry under the homestead or desert land laws, if qualified thereunder, except as against prior existing valid settlement rights and as against preference rights conferred by existing laws or equitable claims subject to allowance and confirmation: *Provided*, That the rights and benefits conferred by this act shall not extend to any person who, having been drafted for service under the provisions of the Selective Service Act, shall have refused to render such service or to wear the uniform of such service of the United States. * * *

DURATION OF WAR

SEC. 1. The war began April 6, 1917, and for the purpose of House Joint Resolution No. 30 (42 Stat. 358), terminated with the adoption of Public Resolution No. 64 (41 Stat. 1359), approved March 3, 1921.

EFFECT OF AMENDMENT ON ORDERS OF RESTORATION PRIOR TO JANUARY 21, 1922

SEC. 2. Lands that had become subject to general disposition prior to January 21, 1922, will not be affected by the amendment, but where lands have been restored heretofore and the period of 63 days' preference right provided by Circulars 678 (47 L. D. 346) had not expired January 21, the preference right for the officers, soldiers, sailors, and marines will be held to extend for the period of 91 days from the beginning of the period.

DURATION OF PREFERENCE-RIGHT PERIOD

SEC. 3. Public or Indian lands opened to entry or restored from withdrawals or reservations after February 14, 1920, and prior to

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[6] See Circular No. 302, p. 792.

February 15, 1930, are subject to the provisions of the public resolution. The time provided therein for filing homestead and desert land applications by those entitled to exercise the privileges conferred thereby will begin and terminate as provided hereinafter, unless otherwise directed in the order opening or restoring the lands. Where such period begins prior to February 15, 1930, it will continue for the time prescribed, even though such period extends after February 15, 1930.

PERSONS ENTITLED TO THE BENEFITS OF THE PUBLIC RESTORATION

SEC. 4. (*a*) The words "officers, soldiers, sailors, and marines," as employed in the public resolution, are generic terms and embrace privates, seamen, sailors, nurses, and all other persons, male or female, who by enlistment or otherwise were regularly enrolled in the Army, Navy, or Marine Corps of the United States during the war with Germany, and who could not voluntarily terminate such service, but does not include civilian employees nor officers, nurses, or members of other organizations not so enrolled in the Army or Navy. Persons entitled to the foregoing privileges will be referred to hereinafter generally as soldiers.

(*b*) A person now in the active service of the United States Army, Navy, or Marine Corps is not entitled to the privileges of the public resolution unless he can show an honorable discharge or separation from a previous service in the Army, Navy, or Marine Corps subsequent to April 6, 1917, and prior to March 3, 1921. Whenever such person can show an honorable discharge or separation from such service he may avail himself of the benefits of the public resolution. Persons who were honorably discharged or separated from service in the United States Army, Navy, or Marine Corps after April 6, 1917, and prior to March 3, 1921, and who by reenlistment or otherwise are now engaged in such service, may exercise the privileges conferred by the public resolution, but must, if they make entry, comply in all particulars with the applicable law and regulations.

(*c*) An alien soldier who served in the United States Army, Navy, or Marine Corps, during the war with Germany, and was honorably discharged, is given the status of a declarant by the act of May 9, 1918 (40 Stat. 542), and if otherwise qualified, may exercise the privileges conferred by the public resolution, and may make an original homestead entry or desert-land declaration, but must, before proving his title under either act, complete his citizenship.

(*d*) A minor soldier, if otherwise within the provisions of the public resolution, may, under the act approved August 31, 1918 (40 Stat. 955), make either a homestead or desert-land entry, and during his minority, or until he reaches the age of 21 years, may verify his homestead or desert-land application before any officer, at any place, authorized to administer oaths under the laws of the State within which the land applied for is situated. Among officers so recognized may be mentioned notaries public, and clerks of courts of record in this country, and consular and diplomatic officers in foreign countries. In connection, however, with public-land entries made by minor soldiers, attention is directed to the restrictive provisions attaching to such entries by public resolution approved September 13, 1918 (40 Stat. 960), and departmental instructions thereunder of October 9, 1918, circular 622 (46 L. D. 451).

QUALIFICATION OF SOLDIERS

SEC. 5. The public resolution provides that the privileges thereunder may be exercised only by those qualified to make a homestead entry or desert-land declaration. A soldier who at date of application is the owner of more than 160 acres of land in any State or Territory of the United States can not make an original homestead entry. The ownership of land is no bar to making a desert-land declaration, but the soldier at the time of filing such declaration must be a resident of the State in which the land is situated. If the soldier at the time his application is filed is not the owner of more than 160 acres of land in any State or Territory, has not made homestead entry or desert-land declaration, nor taken by assignment a desert-land entry, nor acquired agricultural lands from the Government, he may make either an original homestead entry or desert-land declaration, or both, within the limitations fixed by law, if the land applied for is subject to the entry sought. If he has made a homestead or desert-land entry, or has acquired from the Government title to agricultural lands, he should, before filing his application, consult Suggestions to Homesteaders, Circular No. 541, and Statutes and Regulations Governing Entries Under the Desert Land Laws, Circular No. 474, both of which may be obtained by request from the Commissioner of the General Land Office.

SHOWING REQUIRED TO ENTITLE THE SOLDIER TO THE PREFERENCE PROVIDED

SEC. 6. The soldier must show his qualifications to make the entry sought, and in addition thereto, either as a part of his application or by an accompanying statement sworn to before an officer qualified to verify homestead or desert-land applications, that he served in the United States Army, Navy, or Marine Corps on or after April 6, 1917, and prior to March 3, 1921; the approximate period of such service; the unit or units in which such service was performed; that he was honorably separated or discharged from such service or placed in the Regular Army or Navy Reserve, and the date thereof, and that he did not refuse to perform such service or wear the uniform thereof. He should attach to his application a copy of his honorable discharge or separation, or the order placing him in the Regular Army or Navy Reserve, as the case may be, certified as correct by an officer having and using a seal, but he will not be required to file the original order of discharge or transfer. If he has lost his discharge, or is otherwise unable to secure a copy thereof, he must in a verified statement explain fully why such copy was not furnished. A minor soldier must show, in addition to the above, that he was under 21 years of age at the date of the execution of his application.

SOLDIER'S DECLARATORY STATEMENT NOT EFFECTIVE—ENTRY MUST BE MADE

SEC. 7. Rights extended by the public resolution can not be supported by soldier's declaratory statement under the homestead law, but must be exercised through an application to make homestead entry.

EXECUTION AND PRESENTATION OF APPLICATIONS

SEC. 8. To avail himself of the privileges conferred by the public resolution, the soldier, unless he be a minor, must, if not within, go to the land district in which the land is situated, and he should personally examine the land applied for. He must execute his application, whether it be under the homestead or desert-land laws, before either the register or receiver of the local land office, or before a United States commissioner, or a judge or clerk of a court of record in the county in which the land is located, or before one of such officers in the land district and nearest or most accessible to the land. When so executed, the application may be presented to the land office in person, by mail, or otherwise. A minor soldier may execute his application in the manner provided in paragraph (*d*), section 4, hereof.

SOLDIER MUST MAKE ENTRY UNDER THE LAW APPLICABLE

SEC. 9. Where under the law or order of restoration issued pursuant to the provisions of the act of September 30, 1913 (38 Stat. 113), the lands are restored to entry only under the provisions of either the homestead law or the desert-land law, applications by soldiers must be restricted to the applicable law, but where under the law or order of restoration entries may be made under either or both of such laws for lands properly subject thereto, a soldier may file an application under the homestead law and one under the desert-land law, if he does not by such application include more land than he may lawfully acquire under the agricultural laws, provided he is qualified to make the entry sought, and the lands embraced in such applications are lawfully subject thereto, but he will not be permitted to file under both acts for the same tract.

PAYMENTS

SEC. 10. The soldier must make the payments required of other persons under the law, pursuant to which his application is filed or entry is made.

COMPLIANCE WITH LAW AFTER ENTRY

SEC. 11. The soldier must comply with the provisions of the desert-land law in the same manner and make the expenditures on the land and the payments required of other entrymen under that law. Where entry is made under the homestead law, the soldier may, under the provisions of the act approved February 25, 1919 (40 Stat. 1161), extending the provisions of section 2305, Revised Statutes, to service in the United States Army, Navy, or Marine Corps, in connection with the operations on the Mexican border, or in the war with Germany, receive credit for such service, not exceeding two years, in proving his claim. He must establish residence within the time and during at least the first year of his entry reside on the land and otherwise comply with the law in the manner required of other persons. He may at any time after the first year of his entry submit his proof, when he can show that the period of his compliance with the law after establishing residence and his military service equal 36 months. In applying credit for military service under the general or enlarged provisions of the homestead law, the following rule will be observed:

A soldier with 19 months or more military service will be required to reside on the land at least 7 months during the first entry year; with more than 12 and less than 19 months, he must reside on the land 7 months during the first year and such part of the second year as, added to his excess over 12 months' service, will equal 7 months, and must cultivate one-sixteenth of the area the second year; with 7 and not more than 12 months, he must reside upon the land 7 months during each of the first and second years, and cultivate one-sixteenth of the area the second year; with 90 days and less than 7 months, he must reside upon the land 7 months during each year for the first and second years, and such part of the third year as, added to his service, will equal 7 months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. If he delays the submission of proof beyond the period of residence required, the cultivation necessary for the years elapsing before the submission of proof must be shown. He may apply for and receive a reduction in the area to be cultivated, in the same manner and under the conditions required of other applicants. Where the entry is made under the stock-raising provisions of the homestead law, the above rule with respect to residence will be applicable, but the soldier must make the improvements on the land required of other persons under that law, and show that he actually used the land for raising stock and forage crops during the period that he was required to reside on the land. He must show, in any entry under the homestead laws, that he had a habitable house on the land at the date of submitting proof.

LANDS AFFECTED BY THE PUBLIC RESOLUTION

SEC. 12. The public resolution affects only lands that may be entered under the homestead or desert land acts, and does not extend the provisions of either of said laws to areas not otherwise subject thereto. It applies in all cases where such lands become subject to entry, (*a*) by the filing of township plats of survey or resurvey, or (*b*) where Indian lands are opened to entry, or (*c*) where public lands are restored from withdrawals or reservation, or (*d*) where lands are embraced in relinquishments which do not become effective upon being filed in the proper local land office, but upon which action by the commissioner or Secretary is necessary before the lands affected are restored to disposition, or (*e*) where titles are recovered through actions in the courts. It does not apply to lands that were open to entry on the date of its approval, nor to lands embraced in entries canceled by contests, or by reason of expiration of the statutory period, nor to lands embraced in entries or selections where under the law such lands become subject to entry upon the filing of proper relinquishments thereof in the local land office. Where, however, entries made under the provisions of the public resolution are relinquished before the expiration of the preference-right period accorded to soldiers, the lands affected thereby may be entered only by soldiers during such preference-right period.

CLASSES OF HOMESTEAD AND DESERT-LAND ENTRIES ALLOWABLE

SEC. 13. The public resolution applies to all classes of homestead entries, whether under the 160, 320, or 640 acre provisions, and homestead and desert-land entries whether the entire estate is sought or whether the minerals are reserved to the United States. A soldier's homestead application under the enlarged, the stock raising, or other special provisions of the law, will be governed by the regulations applicable thereto, and if by drawing, in case of simultaneous applications, or by time of filing such application is accorded priority, it will be disposed of accordingly.

UNSURVEYED LANDS

SEC. 14. The public resolution will not prevent settlement on unsurveyed lands otherwise subject thereto prior to the filing of the township plat of survey, and where settlements are so made by qualified persons and maintained in the manner required by law, the rights secured thereby will not be subordinated, upon the restoration of the lands, to preferences asserted under the public resolution, but, from the date of the filing of the township plat of survey and until the preference period provided for soldiers has expired, settlements on the lands affected will confer no rights whatsoever.

RIGHTS THAT MAY DEFEAT THE SOLDIER'S APPLICATION

SEC. 15. The rights conferred by the public resolution are subject to existing valid settlement rights and preference rights under existing laws, or equitable claims that are subject to allowance and confirmation. Without attempting to enumerate all the valid claims and existing preference rights that might defeat a soldier's application, the following may be mentioned:

(*a*) Settlement made by a qualified person at a time when the land was lawfully subject thereto, and maintained in the manner required by law to date of such application. The soldier may avoid conflict with such settlers' claims by carefully examining the land before filing his application.

(*b*) The preference rights granted under the provisions of the act of August 18, 1894 (28 Stat. 394), to the States of Washington, Idaho, Montana, North Dakota, South Dakota, Wyoming, and to Utah upon its admission into the Union, and subsequently extended to the States of New Mexico and Arizona by sections 11 and 29 of the enabling act of June 20, 1910 (36 Stat. 565, 575). Where the States mentioned applied for the survey of public lands within their respective limits, and complied with the requirements of said act, the preference rights accorded by said act, if exercised within the 60 days provided, will defeat a soldier's application. The period within which the State must apply in order to protect its preference will begin with the date of the order of restoration of lands withdrawn or in reservation, and surveyed during the time of withdrawal or reservation, and from the date of the filing of the township plat of survey, where the lands were not so withdrawn or reserved.

(*c*) The preference right granted the States of North Dakota, South Dakota, Montana, Idaho, and Washington, by the act of March 3, 1893 (27 Stat. 592), will not defeat soldiers' applications during the preference right period extended by the public resolution. Under the act of March 3, 1893, the rights therein granted attach only when the lands shall have become subject to appropriation under all of the applicable public land laws, while the preferences granted soldiers by the public resolution are effective for a period of at least 90 days before such lands shall become subject to appropriation by others. Therefore, the provisions of the aforesaid act of March 3, 1893, will not prevent the allowance of applications by soldiers during the period hereinafter fixed for filing such preference right applications, but upon the restoration of the land to entry generally, the rights of the several States to lands not then appropriated will attach, and for the period of 60 days thereafter will be superior to the claims of all other applicants, including soldiers.

(*d*) The act of June 11, 1906 (34 Stat. 233). Lands restored under the provisions of the said act of June 11, 1906, are, under the terms of such act, subject to preference rights as follows:

(1) For a period of 60 days by settlers prior to January 1, 1906, who shall not have abandoned such settlement prior to application;

(2) For a like period by persons, if qualified to make homestead entry, upon whose applications the lands were examined and listed.

The foregoing preferences are granted in the order named, and the 60-day period begins on the date the list and order of restoration reach the local land office.

(*e*) Preference rights extended certain Carey Act entrymen under the act approved February 14, 1920 (41 Stat. 407). The rights granted settlers under the provisions of the act of February 14, 1920 (41 Stat. 407), are not absolute, but are conditioned upon the recognition of such rights by the Secretary of the Interior in the order restoring such lands to the public domain. Where the order restoring Carey Act lands does not recognize the preference rights of settlers, nor provide for the exercise thereof, soldiers' applications will be governed by paragraph (*a*), section 16 hereof.

ORDER APPLICABLE TO LANDS OPENED OR RESTORED SUBJECT TO THE PROVISIONS OF THE PUBLIC RESOLUTION

SEC. 16. It is ordered and directed that hereafter, and until February 15, 1930, when any surveyed lands within the provisions of the public resolution are opened or restored to disposition under the authority of the department, such lands, unless otherwise provided in the order of restoration, shall become subject to appropriation under the laws applicable thereto in the following manner, and not otherwise:

(*a*) Lands not affected by the preference rights conferred by the acts of August 18, 1894 (28 Stat. 394), or June 11, 1906 (34 Stat. 233), or February 14, 1920 (41 Stat. 407), will be subject to entry by soldiers under the homestead and desert land laws, where both of said laws are applicable, or under the homestead law only, as the case may be, for a period of 91 days, beginning with the date of the filing of the township plat, in case of survey or resurvey, and with the sixty-third day from and after the order of restoration, in all other cases, and thereafter to disposition under all of the public land laws applicable thereto. For the period of 20 days prior to the restoration or opening of such lands to soldiers' entry, and for a like period prior to the date such lands become subject to entry generally, soldiers in the first instance, and any qualified applicants in the second, may execute and file their applications, and all such applications presented within such 20-day periods, together with those offered at 9 o'clock a. m., standard time, on the dates such lands become subject to appropriation under such applications shall be treated as filed simultaneously.

(*b*) Where the lands are subject to the preference rights conferred by the acts of August 18, 1894 (28 Stat. 394), or June 11, 1906 (34 Stat. 233), and where in the order restoring Carey Act lands preference rights of settlers are recognized under the provisions of the act approved February 14, 1920 (41 Stat. 407), the lands not appropriated under such dominant preference rights will become subject to entry by soldiers under the provisions of both the homestead and desert land laws, or the homestead laws only, at 9 o'clock a. m., standard time, on the first office day after the termination of such preference-right periods, and to entry under all the applicable public land laws at 9 o'clock a. m., standard time, on the ninety-first day from and after such first office day. Soldiers' applications may be filed at any time during such preference-right periods, and will be held subject to such superior preference rights. If the controlling preference right be exercised within the time prescribed, applications of soldiers in conflict therewith will be rejected. If such preference rights be not so exercised, the applications by soldiers filed during such preference-right periods, together with those filed at 9 o'clock a. m., standard time, on the first office day following the termination of such periods, will be treated as filed simultaneously.

DISPOSITION OF APPLICATIONS

SEC. 17. (*a*) Applications treated as filed simultaneously will be rejected where they conflict with superior claims; otherwise they will be disposed of in the manner required by circular 324, approved May 22, 1914 (43 L. D. 254).

(*b*) Soldiers' applications and those of other qualified persons filed after 9 o'clock a. m., standard time, on the dates the lands become subject to such applications, will be disposed of in the order filed.

RESTORATION OF LANDS TO GENERAL DISPOSITION

SEC. 18. (*a*) While the special privileges extended by the public resolution may be exercised by soldiers of the war with Germany only, when the lands shall have been restored to disposition generally, under the applicable public land laws, soldiers of any war may proceed on terms of equality with other qualified persons. Those who served for 90 days or more in the United States Army, Navy, or Marine Corps during the Civil War, Spanish-American War, or Philippine Insurrection, and were honorably discharged, may initiate claims under the homestead law by filing declaratory statements, either in person or by agent. Those who served in the United States Army, Navy, or Marine Corps for 90 days or more in connection with the operations on the Mexican border or during the war with Germany, and were honorably discharged, may file declaratory statements in person, but not by agent. The soldiers who make entry after restoration of the land to general disposition may apply such military service in lieu of residence in proving claims under the homestead laws, to the extent indicated in section 11 hereof.

(*b*) Where the lands are affected by the provisions of the act of March 3, 1893 (27 Stat. 592), the applications of soldiers and other persons will be held subject to the rights of the State for a period of 60 days from and including the date of such general restoration.

Very respectfully,

William Spry, *Commissioner.*

Approved May 1, 1922.

E. C. Finney,
First Assistant Secretary.

[Reported, 49 L. D. 135]

Circular No. 830

PROOFS UPON RECLAMATION HOMESTEAD ENTRIES AND DESERT-LAND ENTRIES SUBJECT TO THE PROVISIONS OF THE RECLAMATION ACT BY INCAPACITATED SOLDIERS—ACT OF APRIL 7, 1922 (42 STAT. 492)

Department of the Interior,
General Land Office,
Washington, D. C., May 29, 1922.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to the amendatory act of April 7, 1922 (42 Stat. 492), which provides:

> That the act approved March 1, 1921 (Forty-first Statutes, page 1202), be amended to read as follows: "That any bona fide settler, applicant, or entryman under the homestead laws of the United States, or any desert-land entryman whose entry is subject to the provisions of the act of June 17, 1902 (Thirty-second Statutes, page 388), who, after settlement, application, or entry, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to the service is unable to return to the land, may make final proof, without further residence, improvement, cultivation, or reclamation, at such time and place as may be authorized by the Secretary of the Interior, and receive patent to the land by him so entered or settled upon, subject to the provisions of the act or acts under which such settlement or entry was made: *Provided*, That no such patent shall issue prior to the conformation of the entry to a single farm unit, as required by the act of August 13, 1914 (Thirty-eighth Statutes, page 686): *And provided further*, That this act shall not be construed to exempt or relieve such applicant or entryman from payment of any lawful fees, commissions, purchase moneys, water charges, or other sums due to the United States, or its successors in control of the reclamation project, in connection with such lands."

2. This amendatory act relates to lands in Federal reclamation projects lawfully subject to homestead entry or for which homestead or desert land entry has been allowed, and the benefits of this act extend to persons who prior to November 11, 1918, and during the war with Germany were actually engaged in the United States Army, Navy, or Marine Corps, regardless of the dates of their enlistments, provided they entered the service after making settlement upon the land claimed or after filing an allowable application for homestead entry thereof, or after making a homestead or desert land entry for surveyed lands, and who having been honorably discharged are unable to accomplish reclamation of the land on account of physical disabilities due to such service, provided, however, that in the case of a homestead entry the entry be conformed to a single farm unit.

3. Notice of intention to submit proof must be given in the usual manner by posting and publication. The proof shall consist (a) of affidavit of claimant (taken before any officer, at any place, who is authorized to administer oaths and who uses an official seal) showing that he is unable to return to the land on account of physical incapacity due to service in the United States Army, Navy, or Marine Corps during the war with Germany, and describing the nature and extent of such disability; (b) of the testimony of two witnesses taken in similar manner corroborating the statements in that regard, and of these witnesses at least one must be a practicing physician; (c) of a certified copy of claimant's discharge from the Army, Navy, or Marine Corps, or an affidavit showing all the facts regarding his service and discharge, in which latter case the facts will be verified so far as possible from the records of the War Department; and (d) claimant's sworn statement, corroborated by two persons having personal knowledge of the facts, and whose testimony must be taken in the county or land district in which the land is situated, setting forth in detail the date when he settled on the land (if a homestead entry) and what acts he performed thereon touching the matter of residence, improvement, and reclamation up to the time of his entering the Military Establishment.

4. Where no application for homestead entry had been filed prior to claimant's entrance into the service, and the benefits of the act are claimed on account of settlement before the beginning of his service, the proof must also include the affidavit of the soldier showing that he had resided upon the land in a habitable house before his entrance into the service, and the testimony of two witnesses showing the facts as to claimant's compliance with the law before entrance into the service, the testimony of these witnesses to be taken in the usual manner in the county or land district in which the land is situated.

5. Where entry for the land has been allowed and the final proof appears satisfactory, and also shows payment of all reclamation moneys which are due to the time of submission of such final proof, you will, in the absence of other objection, issue final certificate, subject to the provisions of the act of June 17, 1902 (32 Stat. 388), and also subject to lien under the act of August 9, 1912 (37 Stat. 265), for the payment of all sums due or to become due to the United States or its successors in control of the irrigation project in connection with

such lands and water right. In cases of claims based upon settlement only and where no application has been filed prior to claimant's entering the military service, or where application has been filed but entry not yet allowed, or protest is filed, you will forward all the papers to the General Land Office for consideration.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved May 29, 1922.

E. C. FINNEY, *First Assistant Secretary.*

[Reported, 50 L. D. 575]

CIRCULAR NO. 949

CONTESTS AGAINST HOMESTEAD ENTRIES ON THE CHARGE OF ABANDONMENT—CIRCULAR NO. 815 REVOKED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 11, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Pursuant to a recent departmental ruling, Circular No. 815 of March 22, 1922 (48 L. D. 594), is hereby revoked, and you will be governed by the following:

In view of the provisions of section 1 of the act of July 28, 1917 (40 Stat. 248), you will not entertain a contest against a homestead entry on the charge of abandonment unless the affidavit of contest contains an allegation to the effect that the absence of entryman was not due to military or naval service, provided the entry was made prior to the termination of the war with Germany (fixed as March 3, 1921, by Public Resolution No. 64, 41 Stat. 1359) or was based on an application filed prior to that date, or in which the claimant has filed a showing of settlement prior thereto.

As to entries made, or applications filed, or settlements initiated since March 3, 1921, the act of 1917 has no application, and in such cases it is unnecessary to allege or prove that the absence of entryman was not due to military or naval service.

Where the averment required by the act of 1917 is necessarily made, and the contestee in his answer joins issue on the allegation, it will be necessary for the contestant to submit evidence in support thereof; otherwise the averment will be treated as established by the affidavits of the witnesses who corroborated the contest affidavit. Likewise, in those cases in which the contestee fails to answer after due service of notice of the contest, the averment of nonmilitary service will be treated as established by the affidavits of the corroborating witnesses.

The provisions of paragraph (c) of Circular No. 750 (48 L. D. 78), are modified to agree with the foregoing.

WILLIAM SPRY, *Commissioner.*

Approved July 11, 1924.

E. C. FINNEY, *First Assistant Secretary.*

[Reported, 50 L. D. 674]

Circular No. 805 (Revised)

PROOFS UPON CLAIMS INITIATED UNDER THE DESERT-LAND LAWS BY INCAPACITATED SOLDIERS—ACT OF DECEMBER 15, 1921 (42 STAT. 348)

Department of the Interior,
General Land Office,
Washington, D. C., November 21, 1924.

Registers and Receivers, United States Land Offices.

Sirs: The act of December 15, 1921 (42 Stat. 348), amends the act of March 1, 1921 (41 Stat. 1202), by adding the following section:

> Sec. 2. That any entryman under the desert-land laws, or any person entitled to preference right of entry under section 1 of the act approved March 28, 1908 (Thirty-fifth Statutes at Large, page 52), who after application or entry for surveyed lands or legal initiation of claim for unsurveyed lands, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to service is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation thereof or payments thereon under such rules and regulations as may be prescribed by the Secretary of the Interior, and receive patent for the land by him so entered or claimed, if found entitled thereto: *Provided*, That no such patent shall issue prior to the survey of the land.

The purpose of the amendment is to relieve from further compliance with the requirements of the desert-land law those persons physically incapacitated, as set forth therein, except as to submission of specified proofs.

2. The benefits of this amendment extend to persons who, prior to November 11, 1918, and during the war with Germany, were actually engaged in the United States Army, Navy, or Marine Corps, regardless of the date of their enlistment, provided they entered the service after having filed an effective desert-land application or made a desert-land entry for surveyed lands, or acquired a preference right to make entry under the desert-land laws of unsurveyed land, or taken a desert-land entry by assignment, and who, having been honorably discharged, are unable to accomplish reclamation of and make payment for the land on account of physical disabilities due to such service.

3. If the land is unsurveyed and entry is not yet allowable, a claimant having a preference right of entry should file his application therefor on Form 4–274, accompanied by his sworn statement, corroborated by two persons having personal knowledge of the facts, setting forth in detail the date when he took possession of the land and what acts he performed thereon touching the matter of its reclamation and improvement. You will assign to the application the current serial number. Final proof may be submitted and accepted, but the final certificate will not issue until entry shall have been lawfully allowed, and adjustment to legal subdivisions made according to an approved survey.

4. Notice of intention to submit proof must be given in the usual manner by posting and publication; and in case of unsurveyed land,

the notice of intention to submit proof must be posted thereon in a conspicuous place, and affidavit evidence must be filed showing such posting.

5. The proof shall consist (a) of affidavit of the claimant (taken before any officer at any place who is authorized to administer oaths and who uses an impression seal) showing that he is unable to return to the land on account of physical incapacity due to service in the United States Army, Navy, or Marine Corps during the war with Germany, and describing the nature and extent of such disability; (b) of the testimony of two witnesses taken in similar manner corroborating the statements in that regard and of these witnesses at least one must be a practicing physician; (c) of a certified copy of his discharge from the Army, Navy, or Marine Corps, or an affidavit showing all the facts regarding his service and discharge. In each case the facts will be verified so far as possible from the records of the War Department.

6. No payment of moneys will be required in connection with any application made, or proofs offered, other than testimony fees, when the testimony is taken before the register or receiver.

7. Where the proof appears satisfactory, and entry for the land has already been allowed, the register will issue the final certificate if there is no objection disclosed by the records. In cases where entry has not yet been allowed, all the papers will be forwarded to the General Land Office for consideration.

Very respectfully,

William Spry, *Commissioner.*

Approved November 21, 1924.

E. C. Finney,
First Assistant Secretary.

TRANSMITTING REGULATIONS IN RE: RELINQUISHMENTS UNDER ACT FEBRUARY 21, 1925 (43 STAT. 956)

Department of the Interior,
General Land Office,
Washington, May 9, 1925.

Registers and Receivers, United States Land Offices.

Gentlemen: There is inclosed a copy of the regulations approved April 17, 1925,[7] by the Acting Secretary of the Interior under the act of February 21, 1925 (43 Stat. 956), providing for refunds by the Bureau of Reclamation to veterans of the World War of construction charges paid by them under Federal irrigation projects. Your attention is called to the fact that the act applies to reclamation homestead entries made since April 6, 1917, which were either canceled or relinquished at the date of the act, or are relinquished within one year from the date of the act and prior to the issuance of the final certificate. Where the entry was canceled or relinquished prior to the date of the act it matters not whether a final certificate had issued, but no refund is authorized where final certificate has issued since the passage of the act. The regulations state that if refund is allowed by the Bureau of Reclamation, the relinquishment will be transmitted by that bureau to this office. Thereupon, this office will notify you in order that the appropriate notations may be made upon the records.

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[7] These regulations have been omitted from this publication.

Very respectfully,

Thos C. Havell,
Acting Commissioner.

Circular No. 302

SOLDIERS' AND SAILORS' HOMESTEAD RIGHTS

[Reprint and revision of regulations of May 26, 1922 (49 L. D. 118)]

Department of the Interior,
General Land Office,
Washington, D. C., January 21, 1929.

1. Any officer, soldier, seaman, or marine who served for not less than 90 days in the Army or Navy of the United States during the Civil War and who was honorably discharged and has remained loyal to the Government, and who makes a homestead entry, is entitled under section 2305 of the Revised Statutes and the act of June 6, 1912 (37 Stat. 123), to have the term of his service in the Army or Navy, not exceeding two years, deducted from the three years' residence required under the homestead laws.

Similar provisions are made in the acts of June 16, 1898 (30 Stat. 473), and March 1, 1901 (31 Stat. 847), for the benefit of like persons who served in the war with Spain, or during the suppression of the insurrection in the Philippines. The act of February 25, 1919 (40 Stat. 1161), as amended by act of April 6, 1922 (42 Stat. 491), makes similar provisions for the benefit of like persons who rendered military or naval service in connection with the Mexican border operations or during the late war with Germany.

2. A soldier or sailor of the classes above mentioned who makes entry as such must begin his residence and cultivation of the land entered by him within six months from the date of filing his declaratory statement, but if he makes entry without filing a declaratory statement he must begin his residence within six months after the date of the entry. Thereafter he must continue both residence and cultivation for such period as will, when added to the time of his military or naval service (under enlistment or enlistments covering war periods), amount to three years; but if he was discharged on account of wounds or disabilities incurred in the line of duty, or honorably discharged but subsequently awarded compensation by the Government for wounds received or disabilities incurred in line of duty in accordance with the act of October 6, 1917 (40 Stat. 398–405), as amended by the act of August 9, 1921 (42 Stat. 147–153), credit for the whole term of his enlistment may be allowed, notwithstanding he may not have served 90 days. However, no patent will issue to such soldier or sailor until there has been residence by him for at least one year.

A soldier with 19 months' or more military service will be required to reside on the land at least 7 months during the first entry year;

with more than 12 and less than 19 months, he must reside on the land 7 months during the first year and such part of the second year as, added to his excess over 12 months' service, will equal 7 months, and must cultivate one-sixteenth of the area the second year; with 7 and not more than 12 months, he must reside upon the land 7 months during each of the first and second years, and cultivate one-sixteenth of the area the second year; with 90 days and less than 7 months he must reside upon the land 7 months during each year for the first and second years, and such part of the third year as, added to his service, will equal 7 months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation unless he was discharged for disabilities or wounds received in line of duty, in which event he would be given credit for the term of his enlistment, not, however, for more than two years. If he delays the submission of proof beyond the period of residence required, the cultivation necessary for the years elapsing before the submission of proof must be shown. He may apply for and receive a reduction in the area to be cultivated, in the same manner and under the conditions required of other applicants. Where the entry is made under the stock-raising provisions of the homestead law, the above rule with respect to residence will be applicable, but the soldier must make the improvements on the land required of other persons under that law, and show in lieu of cultivation that he actually used the land for raising stock and forage crops during the period that he was required to reside on the land. He must show, in any entry under the homestead laws, that he had a habitable house on the land at the date of submitting proof.

3. No credit for military service can be allowed where commutation proof is submitted.

4. A party claiming the benefit of his military service must file with the register a certified copy of his certificate of discharge, showing when he enlisted, when he was discharged, and the organization in which he served, or the affidavit of two reputable, disinterested witnesses, corroborative of the allegations contained in his affidavit on these points, or if neither can be procured his own affidavit to that effect.

PERIODS OF SERVICE FOR WHICH CREDIT MAY BE GIVEN IN LIEU OF RESIDENCE

5. In determining the rights of parties under sections 2304–2309 of the Revised Statutes the Civil War is held to have lasted from April 15, 1861, to August 20, 1866; the Spanish war and Philippine insurrection from April 21, 1898, to July 15, 1903. The operations in Mexico or along the borders thereof began May 9, 1916, and continued until the beginning of the war with Germany, April 6, 1917, which was officially terminated March 3, 1921, by Public Resolution No. 64 of that date.

No credit for military service can be given unless the soldier or sailor served for at least 90 days between the dates above mentioned, unless discharged for disabilities or wounds received in line of duty or died while in the service.

In computing the period of service of a soldier "who has served in the Army of the United States," within the meaning of that phrase as used in section 2304 of the Revised Statutes, the entrance of the soldier into the Army will be considered as dating from the time of voluntary entrance of privates into the Army, Navy, or Marine Corps, or appointment of officers (including those appointed from the Officers' Training Corps); in the case of a person enlisted in the Naval Reserve, from the time he was called into active service; in the case of a drafted man, from the time he was mustered into the service; in the case of members of the Federalized National Guard, from the time they were mustered into the United States service.

An entryman having enlisted and served 90 days during any one of the wars above mentioned is entitled under section 2305 of the Revised Statutes as amended to credit for the full term of his service under that enlistment, although such term did not expire until after the war ceased.

The period of service for which credit may be claimed under section 2305, Revised Statutes, upon the submission of proof by a member of the Naval Reserve Force or of the Federalized National Guard, who was called into active service during the Mexican border operations or during the war with Germany, terminates upon the date of his discharge, and not upon the date that he was ordered to inactive duty.

6. A person who served for less than 90 days in the Army or Navy of the United States during said wars is not entitled to have credit for military service on the required period of residence upon his homestead, unless he was discharged because of disabilities incurred in line of duty in which event he is entitled to have deducted the whole term of his enlistment without reference to the length of time he may have served, but no patent shall issue unless the residence and other requirements have been fulfilled for a period of at least one year.

7. A person serving in the Army or Navy of the United States may make a homestead entry if some member of his family is residing upon the land applied for, and the application and accompanying affidavits may be executed before the officer commanding the branch of the service in which he is engaged. The soldier's family in this connection is restricted to his wife and minor children. Such soldier or sailor is not required to reside personally upon the land, but may receive patent if his family maintain the necessary residence and cultivation until the entry is three years old or until it has been commuted. If the soldier has had war service he may claim credit therefor under the three-year homestead law.

8. A soldier is entitled to the same credit for military service in connection with homestead entries under the enlarged homestead act of February 19, 1909 (35 Stat. 639), and its amendments, and the stock raising act of December 29, 1916 (39 Stat. 862), and its amendments, as is allowed in connection with ordinary homestead entries, but the improvement required by the stock raising act must be placed upon the land as prescribed by the act.

9. The special privileges accorded soldiers or sailors, as above indicated, are not subject to sale or transfer, and can only be exercised by the soldier or sailor himself; but the unmarried widow of a soldier or

sailor of the Mexican border operations or of the war with Germany, or the unmarried widow or minor orphan children of a veteran of the Civil War, the Spanish-American War, or the Philippine insurrection, is entitled to the same privileges, under the homestead laws, as the deceased soldier or sailor if he died possessed of a homestead right. The adult child of a soldier has no special privileges in connection with the homestead laws on account of his father's military service.

HOMESTEAD RIGHTS OF WIDOWS AND MINOR ORPHAN CHILDREN OF DECEASED SOLDIERS AND SAILORS

10. (*a*) If a soldier or sailor makes an entry or files a declaratory statement, and dies before perfecting the same, the right to perfect the claim, including the right to claim credit for the soldier's military service, passes to the persons named in section 2291, Revised Statutes; that is, to his widow, or, if there be no widow, to his heirs or devisees.

(*b*) In case of the death of a veteran of the Civil War, the Spanish War, or the Philippine insurrection, who would be entitled to a homestead under the provisions of section 2304 of the Revised Statutes, but who died prior to the initiation of a claim thereunder, his widow, or in case of her death or remarriage, his minor orphan children, by a guardian, duly appointed and officially accredited at the Department of the Interior, may make the filing and entry in the same manner that the soldier or sailor might have done, subject to all the provisions of the homestead laws in respect to settlement and improvements; and the whole term of service, or in case of death during the term of enlistment, the entire period of enlistment in the military or naval service will be deducted from the time otherwise required to perfect the title to the same extent as might have been allowed the soldier. (Sec. 2307, Rev. Stat.)

Where a homestead entry is made under section 2307, Revised Statutes, by the widow or minor orphan children of a deceased soldier or sailor of the Civil War, the Spanish War, or the Philippine insurrection, compliance with law both as to residence and improvements is required to be shown to the same extent as would have been required of the soldier or sailor in making entry under section 2304, Revised Statutes, except that credit will be given upon the three-year period for the entire term of the enlistment, not exceeding two years, where the soldier or sailor died during the term of his enlistment.

(*c*) In case of widows the prescribed evidence of military service of the husband must be furnished with affidavit of widowhood, giving the date of her husband's death.

In case of minor orphan children, in addition to the prescribed evidence of military service of the father, proof of death or remarriage of the mother must be furnished. Evidence of death may be the testimony of two witnesses or a physician's certificate, duly attested. Evidence of marriage may be certified copy of marriage certificate, or of record of same, or testimony of two witnesses to the marriage ceremony.

Minor orphan children must make a joint entry through their duly appointed guardian, who must file certified copies of the powers of guardianship, which must be transmitted to the General Land Office by the register.

(*d*) In the case of the death of any person who would be entitled to a homestead under the provisions of the act of February 25, 1919 (40 Stat. 1161), because of service in the war with Germany or during the Mexican border operations, but who died prior to having initiated a claim thereunder, pursuant to the provisions of the act of September 21, 1922 (42 Stat. 990), his widow, if unmarried and otherwise qualified, may make entry of public lands under the provisions of the homestead laws of the United States and shall be entitled to all the benefits enumerated in the said act of February 25, 1919, subject to the provisions and requirements as to settlement, residence, and improvements contained in the said act. In such case, the whole term of service will be deducted from the time otherwise required to perfect title to the same extent as may have been allowed the soldier.

Where a homestead entry is made under the act of September 21, 1922, by the widow of a deceased soldier or sailor of the war with Germany or the Mexican border operations, compliance with law, both as to residence and improvements, is required to be shown to the same extent as would have been required of the soldier or sailor in making entry under the act of February 25, 1919.

In the case of such entry, the widow must furnish the prescribed evidence of military service of the husband, with affidavit of widowhood, giving the date of her husband's death, and that she is still unmarried.

Where the widow of a deceased soldier or sailor makes entry pursuant to the act of September 21, 1922, and dies prior to perfection of title, leaving only a minor child or children, patent shall issue to the said minor child or children, upon proof of her death and of the minority of the child or children, without further showing of compliance with the law. The proof may consist merely of affidavits setting forth the facts and duly corroborated. The usual publication and posting of notice of intention to make proof is required in such case.

If the widow of a deceased soldier or sailor makes and perfects the entry pursuant to the foregoing, the final certificate will issue to her, by name, as widow of the deceased soldier or sailor. If the entry is made by the widow and perfected by the minor orphan children as above set forth, the final certificate will issue to such child or children, by name, as minor orphan child or children of (giving the name of the widow), widow of (name of deceased soldier or sailor).

11. All homestead applicants who are not native-born citizens of the United States must have declared their intention to become citizens of this country, and before submitting proof must be fully naturalized.

SOLDIERS' DECLARATORY STATEMENTS

12. (*a*) Soldiers' and sailors' declaratory statements may be filed in the land office for the district in which the lands desired are located by any person entitled to the benefit of sections 2304 and 2307, Revised Statutes, as explained above. Veterans of the Civil War,

the Spanish War, or the Philippine insurrection may file declaratory statements of this character, either in person or through an agent acting under power of attorney, but the entry must be made in person, and not through an agent, within six months from the filing of the declaratory statement, and residence must also be established within that time. Veterans of the World War may file such declaratory statements in person, but not through agent.

The party entitled to file a declaratory statement may make entry in person without filing a declaratory statement if he so desires.

The soldier's declaratory statement, if filed in person, must be accompanied by the prescribed evidence of military service and the oath of the person filing the same, stating his residence and post-office address, and setting forth that the claim is made for his exclusive use and benefit for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person; that he has not heretofore made a homestead entry or filed a declaratory statement under the homestead law (or if he has done so, he must show his qualifications to make a second or additional homestead entry); that he is not the proprietor of more than 160 acres of land in any State or Territory; and that since August 30, 1890, he has not entered or acquired title under the agricultural land laws of the United States, nor is he now claiming under said laws a quantity of land which with the tracts applied for would make more than 320 acres, or, in the case of a claim under the enlarged homestead laws, 480 acres, or in case of a claim under the stock-raising laws, 800 acres.

(*b*) In case of filing a soldier's declaratory statement by agent, the oath must further declare the name and authority of the agent and the date of the power of attorney or other instrument creating the agency, adding that the name of the agent was inserted therein before its execution. It should also state in terms that the agent has no right or interest, direct or indirect, in the filing of such a declaratory statement.

The agent must file (in addition to his power of attorney) his own oath to the effect that he has no interest, either present or prospective, direct or indirect, in the claim; that the same is filed for the sole benefit of the soldier; and that no arrangement has been made whereby said agent has been empowered at any future time to sell or relinquish such claim, either as agent or by filing an original relinquishment of the claimant.

(*c*) Where a soldier's declaratory statement is filed in person, the affidavit of the soldier or sailor must be sworn to before either the register or the acting register of the United States land office, or before a United States commissioner, or a notary public, or before a judge or clerk or prothonotary of a court of record, or the deputy of such clerk or prothonotary, or before a magistrate authorized by the laws of the State, District, or Territory of the United States to administer oaths, in the county, parish, or land district in which the land lies, or before any officer of the classes mentioned who resides nearer or more accessible to the land, although he may reside outside of the county and land district in which the land is situated. Whether a declaratory statement is filed by an agent, the agent's affidavit must be executed before one of the officers above mentioned, but the soldier's affidavit may be executed before any officer having a seal and authorized to administer oaths generally, and not necessarily within the land district in which the land is situated.

The fee to be paid to the register of the land office where the declaratory statement is filed is $2, except in the Pacific States, where it is $3.

(*d*) A homestead entry under a declaratory statement can not be made through an agent, and the entry must be made and settlement on the land commenced within six months after the filing of the declaratory statement. Residence, cultivation, and improvements must be shown to the same extent as though no declaratory statement had been filed.

13. The filing of a declaratory statement will not be held to bar the admission of filings and entries by others, but any person making entry or claim during the period allowed by law for the entry of the soldier will do so subject to his right; and the soldier's application, when offered within such time, will be allowed as a matter of right, and the intervening claimant will be notified and afforded an opportunity to be heard.

14. As implied by the requirements of the oath, a soldier will be held to have exhausted his homestead right by the filing of his declaratory statement, it being manifest that the right to file is a privilege granted to soldiers in addition to the ordinary privilege only in the matter of giving them power to hold their claims for six months after selection before entry but is not a license to abandon such selection with the right thereafter to make a regular homestead entry independently of such filing. This is clear from the statutory language. Section 2304 provides: "A settler shall be allowed six months after locating his homestead and filing his declaratory statement in which to make entry and commence his settlement and improvement"; and section 2309 requires him "in person" to "make his actual entry, commence settlement, and improvement on the same, and thereafter fulfill all the requirements of the law." These must be done on the same lands selected and located by the filing.

15. Soldiers and sailors are cautioned against dealing with the so-called soldiers' claim agencies or persons or companies who represent themselves as authorized by the Government to make entries or filings for soldiers. The Government does not employ nor authorize particular individuals to locate soldiers or sailors, or to file declaratory statements for them, except under the conditions above set forth.

RIGHTS OF WORLD WAR VETERANS

16. House Joint Resolution No. 30, approved January 21, 1922 (42 Stat. 358), amended Joint Resolution No. 29, approved February 14, 1920, (41 Stat. 434), by extending the provisions of the last-mentioned resolution for a period of 10 years from and after February 14, 1920, and increased the preference right conferred thereby from not less than 60 to not less than 90 days from the beginning of the preference right period. Said resolution as amended is applicable to all openings of public or Indian lands to entry or to restoration to entry of public lands withdrawn from entry, and confers upon officers, soldiers, sailors, and marines in the Army or Navy of the United States during the late war, who were honorably separated

or discharged from such service or placed in the Regular Army or Naval Reserve, a preference right of not less than 90 days from the date of opening or restoration in which to make entry for the land under the homestead or desert-land laws, except as against prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation.

Said resolution was further amended by Public Resolution No. 79, approved December 28, 1922 (42 Stat. 1067), extending its provisions to those citizens of the United States who served with the allied armies during the World War, and who were honorably discharged upon the resumption of citizenship in the United States, provided the service with the allied armies was similar to service with the Army of the United States for which recognition is granted by said Resolution No. 29 as amended.

17. The act of July 28, 1917 (40 Stat. 248), protects persons who after making entry or initiating claims under the homestead laws by settlement, application, or entry and thereafter enlisted or were mustered into the military or naval service during the World War or prior to March 3, 1921, from a forfeiture of their claims by reason of the failure of the claimant to do any act otherwise required by law during the period of his service and credits the time in the service as equivalent to residence on and cultivation of the homestead with a maximum credit of two years in case of discharge for disability incurred in line of duty, regardless of actual period of residence and grants complete exemption from further compliance with law by the widow, minor orphan children, or legal representatives where the claimant died in the service, and forbids contest against any homestead entry unless it be alleged and proved that the absence from the land was not due to employment in the military or naval service of the United States.

18. Under the act of February 25, 1919 (40 Stat. 1161), as amended by section 1 of the act of April 6, 1922 (42 Stat. 491), and by Public Resolution No. 79, approved December 28, 1922, one who was in the military or naval service of the United States during the Mexican border operations (regarded as having begun May 9, 1916, and continued until the declaration of war with Germany) or the late war, and who was honorably discharged after having served at least 90 days during such period, or who served for such period with the allied armies during the World War and was honorably discharged and resumed citizenship in the United States, is entitled to a deduction from the homestead residence requirements (three years) equal to the period of service but not to exceed two years—that is, there must be shown residence on the homestead for at least one year even though the military or naval service exceeded two years. If the soldier or sailor was discharged because of disability incurred in line of duty or regularly discharged from the service but subsequently awarded compensation by the Government for wounds received or disabilities incurred in the line of duty, he may claim credit for the full period of his enlistment, subject to the requirement that residence on the homestead for at least one year must be shown. In either case, the credit is in lieu of the cultivation specified by law as well as residence, and if the period of service is such that residence for but one year need be shown, no cultivation

is required to be shown for that year. A year's residence under the homestead laws consists of actual residence for at least seven months and allowable absence of five months in not more than two periods, notice of leaving the homestead and returning thereto to be given to the proper district land office. The final proof must show that there is a habitable house on the land and must not be submitted until the full period of compliance with the requirements of the homestead laws has been effected.

Those citizens of the United States who, during the existence of the war with Germany, entered the military or naval service of a country allied with this country in the World War and who, by taking the oath of allegiance to such foreign country prior to April 6, 1917, expatriated themselves, must, before they may avail themselves of the benefits of this resolution, resume their American citizenship.

A citizen who entered such service after April 6, 1917, did not expatriate himself as the last proviso to section 2 of the act of March 2, 1907 (34 Stat. 1228), provides that:

> No American shall be allowed to expatriate himself when this country is at war.

The service for which credit may be claimed under said resolution must have continued for a period of at least 90 days during the World War and the claimant must show his qualifications to make the entry sought in order to exercise the preference right of entry conferred thereby and in addition thereto as a part of his application or by an accompanying statement sworn to before an officer qualified to verify homestead applications must show the date when his service began, the country with which he served, the nature and length of such service, and that he was honorably separated or discharged therefrom, giving the date thereof. The original or certified copy of the discharge or order of separation from such military or naval service should be attached to the application to make entry or proof thereon. If the claimant has lost his discharge or is otherwise unable to secure a copy thereof, he must in a verified statement explain fully why he can not furnish the same.

19. The act of September 29, 1919 (41 Stat. 288), as amended by section 2 of the act of April 6, 1922 (42 Stat. 491), grants to ex-service men of the late war who made or may hereafter make entry under the homestead laws or who initiate valid homestead claim by settlement or application, and thereafter enter upon a course of training under the vocational rehabilitation act or are furnished hospital treatment by the Government for wounds received or disabilities incurred in line of duty, a leave of absence from the homestead for the purpose of taking such course, or to receive hospital treatment by the Government, and allows the time while so engaged to be credited as constructive residence upon and cultivation of the homestead, subject to the condition that before title by patent may be granted the claimant shall have resided upon, improved, and cultivated the homestead for a period of at least one year. A person who is entitled to the benefits of this act should forward to the local district land office notice of his absence from the land and of the fact that he has been admitted to take a course of vocational training under the act of

June 27, 1918 (40 Stat. 617), or that he is receiving hospital treatment by the Government, together with a certificate to that fact by the proper official. He should also file notice of his return to the land so that the district officer may make due notation on his records.

20. The act of March 1, 1921 (41 Stat. 1202), authorizes homesteaders, applicants, or entrymen who initiated their claims and thereafter enlisted prior to November 11, 1918, in the United States Army, Navy, or Marine Corps during the war with Germany, and were honorably discharged or separated because of physical incapacities due to service, and for that reason are unable to return to the land, to make proof without further residence, improvements, and cultivation at such time and place as may be authorized.

Notice of intention to submit proof under this act must be given in the usual manner by posting and publication, and the proof should consist of the affidavit of the homesteader, executed before an official authorized to administer oaths and use an official seal, showing that he is unable to return to the land on account of physical incapacities, due to service in the United States Army, Navy, or Marine Corps during the war with Germany, and should describe the nature and extent of the disability, which facts should be corroborated by the testimony of two witnesses taken in similar manner, one of whom must be a practicing physician. Such affidavit should be accompanied by a copy of the claimant's discharge from the Army, Navy, or Marine Corps, or an affidavit showing all the facts about his service and discharge.

William Spry, *Commissioner.*

Approved January 21, 1929.

E. C. Finney,
First Assistant Secretary.

(Acts omitted.)

MINERAL CLAIMS

CIRCULAR No. 233

PLACER-MINING CLAIMS—AFFIDAVITS OF IMPROVEMENTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 23, 1913.

Registers and Receivers, United States Land Offices.

SIRS: Where placer-mining claims are applied for by legal subdivisions and proofs of improvements are furnished in accordance with paragraphs 25 and 60, Mining Regulations, you will require the applicant to furnish the affidavits of improvements in duplicate, one copy to be forwarded by you immediately to the chief of field division, in order that he may have the information necessary to expedite an investigation of the claim. If preferred, the applicant may furnish copies of the original affidavits, instead of duplicates.

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

[Reported, 44 L. D. 46]

VALIDATED PLACER LOCATIONS ON PHOSPHATE LANDS—PROOFS AND NOTICE—ACT OF JANUARY 11, 1915 (38 STAT. L. 792)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 31, 1915.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress approved January 11, 1915 (38 Stat. L. 792), entitled "An act validating locations of deposits of phosphate rock heretofore made in good faith under the placer-mining laws of the United States."

The act applies only to placer-mining locations made on lands containing deposit of phosphate rock. It prescribes that phosphate placer locations made in good faith prior to the passage of the act, and prior to the withdrawal of such lands from location, upon which assessment work has been annually performed, shall be valid and may be perfected under the placer-mining laws, except as to lands included in an adverse or conflicting lode location. It authorizes the issuance of patents for such locations, where the provisions of the mining laws in other respects have been complied with.

In addition to the usual proofs claimants, under all pending and future applications based on such validated locations, must submit evidence showing that the assessment work has been annually performed up to and including the year preceding that in which the entry certificate is issued. Such proof may be made by filing the original or authenticated copies of the proofs of annual labor of record in the local recording office, provided such proofs are definite and specific. Where such evidence is not available, a sufficient corroborated affidavit, describing the nature and giving the approximate cost and reasonable value of the work done each year upon or for the benefit of each claim included in the application for patent, will be accepted. Similar proof must be furnished in support of all pending cases, where the entry certificates are outstanding, before such entries will be approved for patent, all else being regular.

The act does not apply to lands included in an adverse or conflicting lode location, unless such adverse or conflicting claim is abandoned. The usual statutory notice of the application must have been or will be given in all cases. Section 2325, Revised Statutes, provides that if no adverse claim is filed during the 60 days of publication "it shall be assumed that the applicant is entitled to a patent * * * and that no adverse claim exists."

Where proper statutory notice has been given and no adverse claim or protest has been filed, it will be conclusively assumed, for patent purposes, that no adverse or conflicting lode location exists; and that if any such once existed, it has been abandoned. No new notice, if the notice already given be found regular and sufficient, will be required in support of any pending entry or application.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

[Reported, 44 L. D. 195]

CIRCULAR NO. 425

INSTRUCTIONS UNDER ACT OF JANUARY 11, 1915 (38 STAT. L. 792), PROVIDING FOR THE PURCHASE AND DISPOSAL OF CERTAIN LANDS CONTAINING THE MINERALS KAOLIN, KAOLINITE, FULLER'S EARTH, CHINA CLAY, AND BALL CLAY, IN TRIPP COUNTY, FORMERLY A PART OF THE ROSEBUD INDIAN RESERVATION, IN SOUTH DAKOTA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 15, 1915.

REGISTER AND RECEIVER,
United States Land Office, Gregory, S. Dak.

SIRS: 1. The act approved January 11, 1915 (38 Stat. L. 792), provides that all lands containing the minerals kaolin, kaolinite, fuller's earth, china clay, and ball clay, in Tripp County, in what was formerly within the Rosebud Indian Reservation in South Dakota, as have heretofore been opened to settlement and entry under acts of Congress which did not authorize the disposal of such mineral lands, shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States, and the proceeds arising therefrom shall be deposited in the Treasury for the same purpose for which the proceeds arising from the disposal of other lands within the reservation in which such mineral-bearing lands are located were deposited.

2. The territory referred to in said act is that portion of the former Rosebud Indian Reservation in Tripp County, S. Dak., opened to settlement and entry by the act of March 2, 1907, (34 Stat. 1230). No mineral locations or entries may be made in said area except for lands containing the minerals described in said act of January 11, 1915.

3. Applications for patents for lands described in said act of January 11, 1915, must contain, in addition to the matter required by paragraph 60 of the mining regulations, approved March 29, 1909 (37 L. D. 769), full and explicit data showing clearly that the lands sought to be patented thereunder are of the character contemplated by said act.

4. By the first proviso to said act of January 11, 1915, it is provided "that the same person, association, or corporation shall not locate or enter more than one claim, not exceeding 160 acres in area, hereunder."

(*a*) Under this clause and the preceding part of the act to which it relates, which provides that the lands containing the designated mineral deposits "shall be open to exploration and purchase and be disposed of under the general provisions of the mining laws of the United States," no location or entry of a claim under said act of January 11, 1915, by a single natural person or corporation can exceed 20 acres in area and in the case of an association no location or entry can exceed 20 acres for each individual participating therein; that is, a location by two persons can not exceed 40 acres, one by three persons can not exceed 60 acres, and one by eight persons can not exceed 160 acres.

(*b*) Rights obtained by location under the mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person, association, or corporation holding as assignee may make entry in his, their, or its name: *Provided*, such person, association, or corporation has not held under said act of January 11, 1915, at any time, either as locator or entryman, any other lands; his, their, or its right is exhausted by having held under said act any particular tract, either as locator or entryman, either as an individual or as a member of an association or corporation. It follows, therefore, that no application for patent or entry, made under said act, shall embrace more than one single location.

(*c*) In order that the conditions imposed by said first proviso may duly appear, the application for patent must contain or be accompanied by a specific statement, under oath, by each person whose name appears therein that he never has, either as an individual or as a member of an association or corporation, located, held, or entered any other lands under the provisions of said act of January 11, 1915. Where the application is by an association or corporation, it must, in like form as above provided, show that each person forming the association or holding stock in the corporation is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has located a claim or filed an application for other lands under the provisions of said act of January 11, 1915.

5. Said act of January 11, 1915, contains the further proviso "that none of the lands or mineral deposits, the disposal of which is herein provided for, shall be disposed of at less price than that fixed by the applicable mining or coal-land laws, and in no instance at less than their appraised value, to be determined by the Secretary of the Interior."

As soon as the register and receiver shall have filed and acted upon the mineral application for patent, and issued notice of allowance thereof they will forward to the chief of field division a duplicate of the sworn statement filed with said application for patent, which duplicate must be furnished by the mineral applicant, and, among other things, fully and accurately describe the land applied for and contain the other data herein prescribed. In the letter transmitting said duplicate sworn statement the local officers will advise the chief of field division as to the land for which the application for patent has been allowed, and the status of such land as shown by their records. Upon the receipt of these papers the chief of field division will docket the case and will promptly make, or cause to be made by a competent special agent, a personal examination of the land as to which the application for patent has been allowed and appraise said land for the purpose of determining the price at which the same shall be sold, which, however, must, in no event, be less than $5 per acre, or fraction of an acre. The schedule of appraisement must be prepared in duplicate, and fully describe, by legal subdivisions, each 10-acre tract, examined and valued, be signed by the appraiser and be approved by the chief of field division; and, on being so completed, (which must be prior to the expiration of the 60-day period of publication of notice of application for patent), they must be at once transmitted to the register and receiver, who will immediately send, by registered mail, one copy of the schedule of appraisement to the record address of the applicant for patent.

When the appraisement is completed, the register and receiver will note the price on their records, and thereafter the land will be sold at such price only, under the provisions of said act of January 11, 1915, in the absence of instructions to the contrary by the Commissioner of the General Land Office. If appraisement be not made and returned prior to the expiration of the period of newspaper publication and within 30 days thereafter, the applicant may, if duly qualified, and in the absence of other objections, purchase the land applied for at the minimum price, viz, $5 for each acre and $5 for each fractional part of an acre.

6. As to matters not covered by these regulations, you will, in general, be governed in the administration of said act of January 11, 1915, by the provisions of the United States mining laws and, so far as applicable, the regulations thereunder of March 29, 1909, and the various amendments thereof.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

A. A. JONES,
First Assistant Secretary.

[Reported, 49 L. D. 15]

Circular No. 430 [1]

UNITED STATES MINING REGULATIONS RELATIVE TO THE RESERVATION, EXPLORATION, LOCATION, POSSESSION, PURCHASE, AND PATENTING OF THE MINERAL LANDS IN THE PUBLIC DOMAIN

Department of the Interior,
General Land Office,
Washington, April 11, 1922.

Special Acts

The act of March 2, 1907 (34 Stat. L. 1232), section 4, provides that the surveyor general of Alaska, under the direction of the Secretary of the Interior, shall furnish receivers a sufficient quantity of numbers to be used in the different classes of official surveys that may be made in the Nome and Fairbanks land districts to meet the requirements thereof, authorizes receivers to furnish numbers for official surveys and an order directing surveyor to make same, such application order and the fee required to be paid to the surveyor general shall be transmitted to the surveyor general, and provides that all surveys thus made shall be approved by the surveyor general as at present.

The act of May 27, 1908 (35 Stat. 317, 365), prohibited mining locations thereafter within the Mount Rainier National Park, but prior valid existent claims were not affected.

Sections 7, 8, and 12 of the act of May 30, 1908, (35 Stat. 558), provides for the extension of the mineral land laws to the classified surplus lands of the Fort Peck Indian Reservation, in the State of Montana.

The act of May 11, 1910 (36 Stat. 354), provides for the establishment of the Glacier National Park, in Montana, and reserves and withdraws from occupancy or disposal under any of the land laws of the United States the lands therein, but protects valid existing claims and locations.

The act of June 7, 1910 (36 Stat. 459), provides for the granting of public lands to certain cities and towns in the State of Colorado for public park purposes and reserves to the United States the oil, coal, and other mineral deposits in such lands.

The act of June 25, 1910 (36 Stat. 848), contains provisions for the establishment and enforcement of miners' labor liens in the Territory of Alaska.

The act of September 30, 1913 (38 Stat. 113), authorizes the President to provide a method for opening public lands restored from reservations, etc.

The act of August 21, 1916 (39 Stat. 519), authorizes the Secretary of the Interior to lease for production of oil and gas ceded lands of the Shoshone or Wind River Indian Reservation in Wyoming. This act is administered through the Commissioner of Indian Affairs.

The act of October 2, 1917 (40 Stat. 297). makes potash deposits subject to disposition only under prospecting permits and leases issued by the Secretary of the Interior, except valid claims existent at date of the act and thereafter duly maintained in compliance with the laws under which initiated, which claims may be perfected under such laws. Regulations under said act are contained in a separate circular.

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[1] Amended by Circulars Nos. 943, p. 844, and 995, p. 845.

Section 26 of the act of June 30, 1919 (41 Stat. 3), authorized the Secretary of the Interior to lease for the purpose of mining metalliferous mineral lands in Indian reservations in certain States. This act is administered through the Commissioner of Indian Affairs.

By the act of February 25, 1920 (41 Stat. 437), deposits of coal, phosphate, sodium, oil, oil shale, and gas in lands valuable for such minerals were made subject to disposition only under prospecting permits and leases issued by the Secretary of the Interior, except valid claims existent at date of said act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. Regulations under said act are contained in separate circulars.

REGULATIONS

NOTE.—In view of the repealing provisions of the potash act of October 2, 1917 (40 Stat. 297), and the leasing act of February 25, 1920 (41 Stat. 437), the following regulations are not applicable to deposits of potash, oil, oil shale, gas, phosphate, or sodium, except as to valid claims existent at date of such repeal and thereafter duly maintained pursuant to the law under which located.

NATURE AND EXTENT OF MINING CLAIMS

1. Mining claims are of two distinct classes: Lode claims and placers.

LODE CLAIMS

2. The status of lode claims located or patented previous to the 10th day of May, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

3. It is to be distinctly understood, however, that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the provisions of the Revised Statutes.

4. From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after the 10th day of May, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

5. With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Revised Statutes provide that the lateral extent of locations of veins or lodes made after May 10, 1872, shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

6. By the foregoing it will be perceived that no lode claim located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts; and that no such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on the 10th day of May, 1872, render such lateral limitation necessary.

7. Locators can not exercise too much care in defining their locations at the outset, inasmuch as the law requires that all records of mining locations made subsequent to May 10, 1872, shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

8. No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

9. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface. His location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the

locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

10. In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

11. The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

12. In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that $10 shall be expended annually in labor or improvements for each 100 feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of Congress approved January 22, 1880, the first annual expenditure becomes due and must be performed during the calendar year succeeding that in which the location was made. (See change, act August 24, 1921 (42 Stat. 186). Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

13. Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation, unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

14. Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

15. Upon the failure of any one of several coowners to contribute his proportion of the required expenditures, the coowners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent coowner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent coowner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his coowners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the

sworn statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must swear that the delinquent coowner failed to contribute his proper proportion within the period fixed by the statute.

TUNNELS

16. The effect of section 2323, Revised Statutes, is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid.

17. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

18. A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

PLACER CLAIMS

19. But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

20. The act of August 4, 1892, extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said law by authorizing a placer entry of such lands. Registers and receivers should make a reference to said act on the entry papers in the case of all placer entries made for lands containing stone chiefly valuable for building purposes. Lands reserved for the benefit of public schools or donated to any State are not subject to entry under said act.

21. The act of February 11, 1897, provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.

22. Upon the presentation of every case within the purview of the act of March 2, 1911 (36 Stat. L. 1015), the local officers must advise the chiefs of field division, in order that the latter may make such field examinations as are advisable or necessary, particularly if the land involved has been embraced in a withdrawal, as to the time when the development work was begun, and be prepared to submit the results, if possible, before entry is allowed. Each such case will be considered and adjudicated upon its record in the regular manner.

Observing that the operation of the act is retrospective only, being confined to locations made prior to the date thereof, you will, upon the presentation of any application for patent affected by the provisions of said act, immediately communicate to the proper chief of field division due and full information thereof, to the end that he may procure to be made such investigations as may be necessary to ascertain the facts concerning the inception and subsequent prosecution of development operations, the extent and character of such works, and any other facts bearing upon and affecting the validity of the claim, including the continuousness and diligence with which development proceeded from the date of inception.

Report made of the results of such examinations will be submitted to this office, upon receipt of which the local officers will be advised as to the action to be taken.

23. By section 2330 authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

24. A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but, in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

25. The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the affidavit of two or more disinterested witnesses. The annual expenditure to the amount of $100, required by section 2324, Revised Statutes, must be made upon placer as well as lode locations.

26. Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases, whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the affidavit of two or more witnesses.

27. By section 2330 it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

28. Section 2331 provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

29. The foregoing provisions of law are construed to mean that after the 9th day of July, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that is, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

30. The regulations hereinbefore given as to the manner of marking locations on the ground, and placing the same on record, must be observed in the case of placer locations so far as the same are applicable, the law requiring, however, that all placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L. D. 250.)

REGULATIONS UNDER SALINE ACT

31. Under the act approved January 31, 1901, extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States and the Territory of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

32. Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, He has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

33. In order that the conditions imposed by the proviso, as set forth in the above paragraph, may duly appear, the application for patent must contain or be accompanied by a specific statement under oath by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing under oath, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

Procedure to Obtain Patent to Mineral Lands

LODE CLAIMS

34. The claimant is required, in the first place, to have a correct survey of his claim made under authority of the surveyor general of the State or Territory in which the claim lies, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Four plats and one copy of the original field notes in each case will be prepared by the surveyor general; one plat and the original field notes to be retained in the office of the surveyor general;

one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference. As there is no resident surveyor general for the State of Arkansas, applications for the survey of mineral claims in said State should be made to the commissioner of this office, who, under the law, is, ex officio, the United States surveyor general.

The surveyor general will prepare the original plat on Form 4–675. All lines clear and sharp in black. All letters and figures clear and sharp in black.

The original plat, so prepared, will be signed and dated by the surveyor general and forwarded to the General Land Office flat or in tube and unmounted.

As to plats of survey of mining claims outside of the Territory of Alaska, the commissioner will have three photolithographic copies made upon drawing paper, which copies, with the original plat, will be forwarded to the surveyor general, the four plats to be filed and disposed of in the same manner as provided in paragraph 34 of the Mining Regulations, viz: One plat and the original field notes to be retained in the office of the surveyor general; one copy of the plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district, to be retained on his files for future reference.

As to plats of survey of mining claims in the Territory of Alaska, the commissioner will have three photolithographic copies made upon drawing paper, two copies of which, with the original plat, will be forwarded to the surveyor general, the three plats to be filed and disposed of as follows: One plat and the original field notes to be retained in the office of the surveyor general; one plat and a copy of the field notes to be given the claimant, for filing with the proper register, to be finally transmitted by that officer, with other papers in the case, to this office, and one plat to be sent by the surveyor general to the register of the proper land district to be retained in his files for future reference. The commissioner will mail one photolithographic copy of the plat, made upon drawing paper, direct to the applicant for survey, or to his agent or attorney, when the application is made by agent or attorney, at his record address, to be used for posting on the land.

A certain number of photolithographic copies will be furnished the surveyor general for sale at a cost of 25 cents each, and a photolithographic copy printed on tracing paper will be furnished the surveyor general, from which blue prints may be made, to be sold at cost.

35. The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district re-

quire the notice of location to be recorded), and when the original location is made by survey of a United States mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.

36. The surveyors general should designate all surveyed mineral claims by a progressive series of numbers, beginning with survey No. 37, irrespective as to whether they are situated on surveyed or unsurveyed lands, the claim to be so designated at date of issuing the order therefor, in addition to the local designation of the claim; it being required in all cases that the plat and field notes of the survey of a claim must, in addition to the reference to permanent objects in the neighborhood, describe the locus of the claim with reference to the lines of public surveys by a line connecting a corner of the claim with the nearest public corner of the United States surveys, unless such claim be on unsurveyed lands at a distance of more than 2 miles from such public corner, in which latter case it should be connected with a United States mineral monument. Such connecting line must not be more than 2 miles in length, and should be measured on the ground direct between the points, or calculated from actually surveyed traverse lines if the nature of the country should not permit direct measurement. If a regularly established survey corner is within 2 miles of a claim situated on unsurveyed lands, the connection should be made with such corner in preference to a connection with a United States mineral monument. The connecting line or traverse line must be surveyed by the mineral surveyor at the time of his making the particular survey and be made a part thereof.

37. (*a*) Promptly upon the approval of a mineral survey the surveyor general will advise both this office and the appropriate local land office, by letter (Form 4–286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the locus of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but hereafter no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by this office.

(*b*) Upon application to make agricultural entry of the residue of any original lot or legal subdivision of 40 acres, reduced by mining claims for which patent applications have been filed and which residue has been already reallotted in accordance therewith, the local officers will accept and approve the application as usual, if found to be regular. When such an application is filed for any such original lot or subdivision, reduced in available area by duly asserted mining claims but not yet relotted accordingly, the local officers will promptly advise this office thereof; and will also report and identify any pending application for mineral patent affecting such subdivision which the agricultural applicant does not desire to contest. The surveyor general will thereupon be advised by this office of such mining claims, or portions thereof, as are proper to be segregated, and directed to prepare at once, upon the usual drawing-paper township blank, diagram of amended township survey of such original lot or legal 40-acre subdivision so made fractional by such mineral segregation, designating the agricultural portion by appropriate lot number, beginning with No. 1 in each section and giving the area of each lot, and will forthwith transmit one approved copy to the local land office and one to this office. In the meantime the local officers will accept the agricultural application (if no other objection appears), suspend it with reservation of all rights of the applicant if continuously asserted by him, and upon receipt of amended township diagram will approve the application (if then otherwise satisfactory), as of the date of filing, corrected to describe the tract as designated in the amended survey.

(*c*) The register and receiver will allow no agricultural claim for any portion of an original lot or legal 40-acre subdivision, where the reduced area is made to appear by reason of approved surveys of mining claims and for which applications for patent have not been filed, until there is submitted by such agricultural applicant a satisfactory showing that such surveyed claims are in fact mineral in character; and applications to have lands asserted to be mineral or mining locations segregated by survey, with the view to agricultural appropriation of the remainder, will be made to the register and receiver for submission to the Commissioner of the General Land Office, for his consideration and direction, and must be supported by the affidavit of the party in interest, duly corroborated by two or more distinterested persons, or by such other or further evidence as may be required in any case, that the lands sought to be segregated as mineral are in fact mineral in character; otherwise, in the absence of satisfactory showing in any such case, such original lot or legal subdivision will be subject to agricultural appropriation only. When any such showing shall be found to be satisfactory and the necessary survey is had, amended township diagram will be required and made as prescribed in the preceding section.

38. The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

39. The claimant is then required to post a copy of the plat of such survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care can not be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

(*a*) The notices of applications for patent for lands in Alaska are, in many cases, not sufficient to apprise adverse claimants and the public generally of the location of the land applied for, and therefore do not serve the purpose for which such notices are required; nor can the location of the land be ascertained from the application papers themselves and without obtaining information from other sources. This is due principally to the large area of unsurveyed land in the district and remoteness from centers of population of much of the country. In order to give a more definite description of the land applied for the following special instructions with reference to the Territory of Alaska are issued, which are supplemental to but do not change or modify existing regulations:

(*b*) The field notes of survey of all claims within the Territory of Alaska, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied, by giving its latitude and longitude, and its position with reference to rivers, creeks, mountains or mountain peaks, towns, or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or mining camp, or to a river or mountain appearing on the map of Alaska, which description shall appear in the field notes regardless of whether or not the survey be tied to an existing monument, or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

(*c*) All notices of applications for patent for lands in the Territory of Alaska, where the survey on which the application is based is not tied to a corner of the public survey, shall, in addition to the description required to be given by existing regulations, describe the monument to which the claim is tied by giving its latitude and longitude and a reference by approximate course and distance to a town, mining camp, river, creek, mountain, mountain peak, or other natural object appearing on the map of Alaska, and any other facts shown by the field notes of survey which shall aid in determining the exact location of such claim without an examination of the record or a reference to other sources. The registers and receivers will exercise discretion in the matter of such descriptions in the published notices, bearing in mind the object to be attained, of so describing the land embraced in the claim as to enable its location to be ascertained from the notice of application.

40. After posting the said plat and notice upon the premises the claimant will file with the proper register and receiver a copy of such plat and the field notes of survey of the claim, accompanied by the affidavit of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said affidavit.

41. At the time the foregoing are filed the claimant must file an application for patent, under oath, showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress, such sworn statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Land Department to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(*a*) The register and receiver will require each person applying to enter or in any manner acquire title to any of the lands in Alaska, under any law of the United States, to file a corroborated affidavit to the effect that none of the lands covered by his application are embraced in any pending application for an allotment under the act of May 17, 1906 (34 Stat. 197), or in any pending allotment; that no part of said land was at the date of the location of the land claimed under the mining law occupied or claimed by any Indian whose occupancy or claim existed on the date of the acts granting to natives of Alaska the right to hold land used, occupied, or claimed by them (acts of Congress of May 17, 1884, 23 Stat. 24, and June 6, 1900, 31 Stat. 330), and had been continued down to and including date of location; that such land is in the bona fide legal possession of the applicant; and that no part of such land is in the bona fide legal possession of or is occupied by any Indian or native. (37 L. D. 616 and 43 L. D. 88, 272.)

42. This sworn statement must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim, certified by the legal cus-

todian of the records of transfers or by a duly authorized abstracter of titles. The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth.

Outside of the Territory of Alaska the application for patent will be received and filed if the abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental abstract brought down so as to include the date of the filing of the application. Publication will not be ordered until the showing as to title is thus completed and the local land officers are satisfied that full title was in the applicant on the day of the filing of the application.

In the Territory of Alaska the application for patent will be received and filed and the order for publication issued if the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

No certificate from an abstracter or abstract company will be accepted until approval by the commissioner of the General Land Office of a favorable report of the chief of field division, or United States district attorney whose division or district embraces the lands in question, as to the reliability and responsibility of such abstracter or company.

43. In the event of the mining records in any case having been destroyed by fire or otherwise lost, affidavit of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the affidavit of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

44. Before approving for publication any notice of an application for mineral patent, local officers will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for any land embraced in a railroad selection, or for which publication is pending or has been made by any other claimants, and if, in their opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, they should formally reject the same, giving the reasons therefor, and allow the applicant 30 days for appeal to this office under the rules of practice.

Local officers will give prompt and appropriate notice to the railroad grantee of the filing of every application for mineral patent which embraces any portion of an odd-numbered section of surveyed lands within the primary limits of a railroad land grant, and of every such application embracing any portion of unsurveyed lands within such limits (except as to any such application which embraces a portion or portions of those ascertained or prospective odd-numbered sections only, within the limits of the grant in Montana and

Idaho to the Northern Pacific Railroad Co., which have been classified as mineral under the act of February 26, 1895, without protest by the company within the time limited by the statute or the mineral classification whereof has been approved).

Should the railroad grantee file protest and apply for a hearing to determine the character of the land involved in any such application for mineral patent, proceedings thereunder will be had in the usual manner.

Any application for mineral patent, however, which embraces lands previously listed or selected by a railroad company will be disposed of as provided by the first section of this paragraph, and the applicant afforded opportunity to protest and apply for a hearing or to appeal.

Notice should be given to the duly authorized representative of the railroad grantee, in accordance with the Rules of Practice. When the claims applied for are upon unsurveyed land, the burden of proving that they are situate within prospective odd-numbered sections will rest upon the railroad.

Evidence of service of notice should be filed with the record in each case.

45. Upon the receipt of these papers, if no reason appears for rejecting the application, the register will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. When the notice is published in a weekly newspaper, 9 consecutive insertions are necessary; when in a daily newspaper, the notice must appear in each issue for 61 consecutive issues. In both cases the first day of issue must be excluded in estimating the period of 60 days.

46. The notices so published and posted must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances. (See also par. 39 (*a*), (*b*), (*c*).)

47. The register shall publish the notice of application for patent in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

48. The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the register a certificate of the surveyor general that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or

permanent monuments as will perpetuate and fix the locus thereof: *Provided*, That as to all applications for patents made and passed to entry before July 1, 1898, or which are by protests or adverse claims prevented from being passed to entry before that time, where the application embraces several locations held in common, proof of an expenditure of $500 upon the group will be sufficient, and an expenditure of that amount need not be shown to have been made upon, or for the benefit of, each location embraced in the application.

49. The surveyor general may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who actually makes survey and examination of the premises, in so far as such matters rest in the personal knowledge of the mineral surveyor. The mineral surveyor should specify with particularity and full detail the character and extent of such improvements. As to when and by whom the improvements were made and other essential matters not within such mineral surveyor's personal knowledge, recourse may be had by the surveyor general to corroborated affidavits by persons possessing such personal knowledge, or the best evidence in this behalf otherwise obtainable. This showing should accompany the report of the mineral surveyor as to improvements.

50. It will be convenient to have this certificate indorsed by the surveyor general, both upon the plat and field notes of survey filed by the claimant as aforesaid.

51. After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own affidavit showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

52. Upon the filing of this affidavit the register will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, the receiver issuing the usual receipt therefor. The claimant will also make a sworn statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the register and receiver of the land office, after which the complete record will be forwarded to the Commissioner of the General Land Office and a patent issued thereon if found regular.

53. At any time prior to the issuance of patent protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest can not, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature

and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a coowner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (See Turner *v.* Sawyer, 150 U. S., 578–586.)

54. Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

55. The annual expenditure of $100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes, is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (see regulations thereunder, dated March 31, 1915), solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

56. The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

57. The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

PLACER CLAIMS

58. The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims can not be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

59. The proceedings for obtaining patents for veins or lodes having already been fully given, it will not be necessary to repeat them here, it being thought that careful attention thereto by applicants and the local officers will enable them to act understandingly in the matter, and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at $2.50 per acre or fractional part of an acre.

60. In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim

that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes, must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

While these data are required as a part of the mineral surveyor's report under paragraph 167, in case of placers taken by special survey, it is proper that the applicaton for patent incorporate these facts under the oath of the claimant.

Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

As prescribed by paragraph 25, this statement as to the description and value of the improvements must be corroborated by the affidavits of two disinterested witnesses.

Applications awaiting entry, whether published or not, must be made to conform to these regulations, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

Local land officers are instructed that if the proofs submitted in placer applications under this paragraph are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the bona fides of the location and application, or the character and extent of the deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the Chief of Field Service thereto in connection with the usual notification to him under the circular instructions of April 24, 1907,[2] and suspend further action on the application until a report thereon is received from the field officer.

Attention is directed to the act of Congress approved August 1, 1912 (37 Stat. L. 242), entitled "An act to modify and amend the mining laws in their application to the Territory of Alaska, and for other purposes." In administering this act the foregoing regulations should be followed in so far as they are applicable, and these additional instructions of October 29, 1912, are prescribed:

It is important to note that this act applies exclusively to placer mining claims located in Alaska on or after August 1, 1912. It does not in any manner relate to lode mining claims, or to placer mining claims located prior to said date. The terms of the act lay strict limitations and conditions with respect to placer locations made upon or after said date.

Section 1 of the act provides that no association placer claim shall be located after August 1, 1912, in excess of 40 acres. This limitation is positive whatever may be the number of persons associated together or whatever the local district rules or regulations may permit.

Said section further provides that on every placer mining claim located in Alaska after the passage of the act, and until patent therefor has been issued, not less than $100 worth of labor must be performed or improvements made during each year, including the year of location, for each and every 20 acres or excess fraction thereof included in the claim. This means that the first annual expenditure on such a placer mining location must be accomplished for and during the calendar year in which the claim is located, instead of during the calendar year succeeding that in which the location is made. Moreover, the amount of annual expenditure is dependent upon the size of the claim, it being required that at least $100 must be expended for each 20 acres, or excess fraction thereof, embraced in the location.

By section 2 it is provided that no person, as attorney or agent for another, may locate any placer mining claim unless duly authorized by a power of attorney properly acknowledged and recorded in some recorder's office within the judicial division where the location is made. Furthermore, an authorized agent or attorney can act in making locations of placer mining claims for only two individual principals or one associate principal during any calendar month and during that period may not lawfully locate more than two claims for any one principal either individual or association. No placer claim can lawfully be located except in compliance with and under the limitations of the act.

In order that the land department may be fully advised in the premises, the following requirements must be met with regard to applications for placer mining claims located in Alaska on or after August 1, 1912:

(*a*) Where location is made by agent or attorney the power of attorney must be in writing and must be executed and acknowledged in accordance with the laws of the Territory of Alaska or of the State, Territory, or District in which it shall be executed. It must be recorded in the proper recorder's office, as prescribed by the act. The application for patent must be accompanied by a certified copy of such power of attorney which must show the recordation thereof; but it will be sufficient if such certified copy is attached to and made a part of the abstract of title.

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[2] Rule 7 of this circular amended Oct. 30, 1913. See 42 L. D. 474; see also p. 1095.

(*b*) One of the principal purposes of the act is to limit the number of placer mining locations made in Alaska through agents or attorneys. An agent or attorney can not at one time represent more than two individuals or one association under powers of attorney. A duly authorized agent may make two locations for each of two individual principals, or for one association principal, during any calendar month, but he can make no further locations during that month for those or other principals.

The application for patent should accordingly be accompanied by the sworn statement of the agent or attorney setting forth specifically the names of all placer mining claims, together with the date of location and names of the locators, which were located or attempted to be located by him under powers of attorney during the calendar month in which the placer claim applied for was located.

(*c*) By section 3 it is prescribed that no person shall directly locate, or through an agent or attorney cause or procure to be located, for himself more than two placer mining claims in any calendar month: *Provided*, *however*, That one or both of such locations may be included in an association claim.

Whenever a person or an association has participated in the locating of placer mining claims in Alaska to the extent of two such claims in any calendar month, such person or such association thereby exhausts the right to make placer location for that month. The application for patent, therefore, for a placer mining claim located in Alaska on or after August 1, 1912, must contain or be accompanied by a specific statement, under oath, as to each locator who had an interest therein, showing specifically and in detail all placer locations made by him, or in which he was associated, either directly or through any agent or attorney, during the calendar month in which the claim applied for was located. If no locations in excess of those permitted by law were made during such calendar month a specific statement, under oath, to that effect, should be submitted. This showing must be made in addition to that hereinabove required of the agent himself.

Section 4 of the act prohibits the patenting of any placer mining claim located in Alaska after the passage of the act, which contains a greater area than that fixed by law or which is longer than three times its greatest width. The surveyor general will be careful to observe the above requirements and will not approve any survey of a placer location which does not in area and dimensions conform to the provisions of law.[a]

By section 5 of the act it is declared that any placer mining claim attempted to be located in violation of the provisions and limitations of the act shall be null and void and the whole area covered by such attempted location may be located by any qualified person the same as if no such prior attempted location had been made. Consequently, any attempted placer location not made in conformity with the act is a nullity and the land covered thereby is open for and subject to proper location at any time.

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[a] See amendment, p. 845.

It will be observed that the act does not affect the number of claims, lode or placer, and if placer whether located before or after the passage of the act, which may be included in a single application proceeding.

MILL SITES

61. Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims, and as section 2337, which provides for the patenting of mill sites, is embraced in the chapter of the Revised Statutes relating to mineral lands, they are therefore included in this circular.

62. To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, under oath, in manner already set forth herein, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

63. Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and mill-site claim.

64. In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed herein for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at said price per acre.

65. In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the sworn statement of two or more persons capable, from acquaintance with the land, to testify understandingly.

CITIZENSHIP

66. The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case

of an incorporated company, a certified copy of their charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the affidavit of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This affidavit must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the affidavit of citizenship to act for them in the matter of their application for patent.

67. In case of an individual or an association of individuals who do not appear by their duly authorized agent, the affidavit of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

68. In case an applicant has declared his intention to become a citizen or has been naturalized, his affidavit must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

69. The affidavit of the claimant as to his citizenship may be taken before the register or receiver, or any other officer authorized to administer oaths within the land districts; or, if the claimant is residing beyond the limits of the district, the affidavit may be taken before the clerk of any court of record or before any notary public of any State or Territory.

70. If citizenship is established by the testimony of disinterested persons, such testimony may be taken at any place before any person authorized to administer oaths, and whose official character is duly verified.

71. No entry will be allowed until the register has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

72. The mineral entries will be given the current serial numbers according to the provisions of the circular of June 10, 1908, whether the same are of lode or of placer claims or of mill sites.

73. In sending up the papers in a case the register must not omit certifying to the fact that the notice was posted in his office for the full period of 60 days, such certificate to state distinctly when such posting was done and how long continued. The schedule of papers, form 4–252f, should accompany the returns with all mineral applications and entries allowed.

Possessory Right

74. The provisions of section 2332, Revised Statutes, will greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

75. When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his sworn statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bone fides which he may desire to submit in support of his claim.

76. There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

77. The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

Adverse Claims

78. An adverse claim must be filed with the register and receiver of the land office where the application for patent is filed or with the register and receiver of the district in which the land is situated at the time of filing the adverse claim. It must be on the oath of the adverse claimant, or it may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated.

79. Where an agent or attorney in fact verifies the adverse claim, he must distinctly swear that he is such agent or attorney, and accompany his affidavit by proof thereof.

80. The agent or attorney in fact must make the affidavit in verification of the adverse claim within the land district where the claim is situated.

81. The adverse claim so filed must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts

should be supported by the affidavit of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

82. In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided*, *however*, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

83. Upon the foregoing being filed within the 60-day period of publication, the register, or in his absence the receiver, will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

84. When an adverse claim is filed as aforesaid, the register or receiver will indorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

(*a*) The act of Congress approved June 7, 1910 (36 Stat. L. 459), relates to the filing of adverse claims and the institution of suits thereon, with respect to mineral applications in the Territory of Alaska.

In administering this act the foregoing regulations should be followed in so far as they are applicable, and these additional instructions are prescribed.

EXTENSION OF TIME FOR FILING ADVERSE CLAIMS

The act provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision applies to any application where the 60-day period of publication ended with, or ends after, June 7, 1910, and operates to enlarge by 8 months additional the time within which an adverse claim may be filed. This provision does not apply to any application under which the 60-day period of publication ended with, or before, June 6, 1910, for, if no adverse claim was seasonably filed in such case, the statutory assumption that none existed has arisen, upon the expiration of the publication period, in favor of the applicant.

EXTENSION OF TIME WITHIN WHICH ADVERSE SUITS MAY BE INSTITUTED

(*b*) It is also provided by the act that adverse suits may be instituted at any time within 60 days after the filing of adverse claims in the local land office. This provision applies to any adverse claim under which the 30-day period fixed under the former law for commencing the adverse suit was running on, or expired with, June 7, 1910, and enlarges such time to a period of 60 days, and also to any adverse claim which is seasonably filed on, or after, June 7, 1910. Such provision has no operation in a case where, under the former law, the 30-day period within which to institute suit on an adverse claim expired with, or ended before, June 6, 1910, and the 60-day publication period also expired on or before June 6, 1910.

Registers and receivers of United States land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with, or after, June 7, 1910, no entry will in any event be allowed until after the expiration of the 8-month period following the publication period.

85. Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the register a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes, and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

86. Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

87. After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

88. Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

APPOINTMENT OF SURVEYORS FOR SURVEY OF MINING CLAIMS AND CHARGES

89.[3] Section 2334 provides for the appointment of surveyors to survey mining claims, and authorizes the Commissioner of the General Land Office to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

(1) The charge for the publication of notice of application for patent in a mining case, in all districts, exclusive of Fairbanks, Alaska, shall not exceed the legal rates allowed by the laws of the State, wherein the notice is published, for the publication of legal notices, and in no case shall the charge exceed $7 for each 10 lines of space occupied where publication is had in a daily newspaper, and where a weekly newspaper is used as a medium of publication $5 shall be the maximum charge for the same space. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

For such publications in the Fairbanks and Nome districts the maximum rate is fixed at $10 for each 10 lines of space in a daily newspaper for the required period, and at $7 for the same space and time if publication be had in a weekly newspaper.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that they are to be in the usual body type used for legal notices.

(2) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed $8 for five publications in a weekly newspaper, or $10 for publication in a daily newspaper for 30 days.

90. The surveyors general of the several districts will, in pursuance of said law, appoint in each land district as many competent surveyors for the survey of mining claims as may seek such appointment, it being distinctly understood that all expenses of these notices and surveys are to be borne by the mining claimants and not by the United States. The statute provides that the claimant shall also be at liberty to employ any United States mineral surveyor to make the survey. Each surveyor appointed to survey mining claims before entering upon the duties of his office or appointment shall be required to enter into a bond of not less than $5,000 for the faithful performance of his duties.

91. With regard to the platting of the claim and other office work in the surveyor generals' office, that officer will make an estimate of the cost thereof, which amount the claimant will deposit with any assistant United States treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "deposits by individuals for surveying public lands," and file with the surveyor general duplicate certificates of such deposit in the usual manner.

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[3] See amendment, p. 844. Also see Circular No. 39, p. 1442, Circular No. 996, p. 1476, and Circular No. 1042, p. 1478.

92. The surveyors general will endeavor to appoint surveyors to survey mining claims so that one or more may be located in each mining district for the greater convenience of miners.

93. The usual oaths will be required of these surveyors and their assistants as to the correctness of each survey executed by them.

The duty of the surveyor ceases when he has executed the survey and returned the field notes and preliminary plat thereof with his report to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of an application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim.

The surveyors general and local land officers are expected to report any infringement of this regulation to this office.

94. Should it appear that excessive or exorbitant charges have been made by any surveyor or any publisher, prompt action will be taken with the view of correcting the abuse.

Fees of Registers and Receivers

95. The fees payable to the register and receiver for filing and acting upon applications for mineral-land patents are $5 to each officer, to be paid by the applicant for patent at the time of filing, and the like sum of $5 is payable to each officer by an adverse claimant at the time of filing his adverse claim. (Sec. 2238, R. S., par. 9.)

(Paragraphs 96, 97, and 98 are superseded by the general circular instructions of August 9, 1918 (46 L. D. 513), prescribing the method of keeping records and accounts relating to the public lands.)

Hearings to Determine Character of Lands

99. The Rules of Practice in cases before the United States district land offices, the General Land Office, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

100. Public land returned by the surveyor general as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome by testimony taken in the manner hereinafter described.

101. Hearings to determine the character of lands:

(1) Lands returned as mineral by the surveyor general.

When such lands are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral affidavit in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(2) Lands returned as agricultural and alleged to be mineral in character.

Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

(Paragraphs 102 to 104, inclusive, are superseded by appropriate instructions relative to nonmineral proofs in railroad, State, and forest lieu selections contained in separate circulars.)

105. At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof—whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

106. The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

107. The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

108.[b] When the case comes before this office, such decision will be made as the law and facts may justify. In cases where a survey is necessary to set apart the mineral from the agricultural land, the United States surveyor general for the district in which the lands are located will be authorized to prepare special instructions for its execution, and upon approval of such instructions by this office assignment will be made to a United States surveyor to make the survey. The work will be performed without expense to the agricultural claimant or to the mineral claimant, and upon completion, approval, and acceptance thereof the local land office will be supplied with an authenticated copy of the plat of said segregation survey, which will become the basis for the disposal of the nonmineral lands exhibited thereon. The local land office will, in all cases, be advised of the issuance of authority for the survey and a copy thereof will be furnished for service on the mineral claimant.

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[b] See Circular No. 421, p. 1460.

109 and 110. (Omitted.)

111. The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with the foregoing regulations.

Blank forms for proofs in mineral cases are not furnished by the General Land Office.

TERRITORY OF ALASKA

112. Section 13, act of May 14, 1898, according to native-born citizens of Canada " the same mining rights and privileges " in the Territory of Alaska as are accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada, is not now and never has been operative, for the reason that the only mining rights and privileges granted to any person by the laws of the Dominion of Canada are those of leasing mineral lands upon the payment of a stated royalty, and the mining laws of the United States make no provision for such leases.

113. For the sections of the act of June 6, 1900, making further provision for a civil government for Alaska, which provide for the establishment of recording districts and the recording of mining locations; for the making of rules and regulations by the miners and for the legalization of mining records; for the extension of the mining laws to the Territory of Alaska, and for the exploration and mining of tide lands and lands below low tide; and relating to the rights of Indians and persons conducting schools or missions, see page 21 of this circular.[c]

MINERAL LANDS WITHIN NATIONAL FORESTS

114. The act of June 4, 1897, provides that " any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," nothwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

The act also provides that " The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, building, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located."

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[c] This reference is to p. 21 of Circular No. 430 as issued in pamphlet form, containing the text of portions of sec. 15 of the act of June 6, 1900 (31 Stat. 321), which text has been omitted from this publication.

TRANSFER OF NATIONAL FORESTS

Act of February 1, 1905 (33 Stat. 628)

The Secretary of the Department of Agriculture shall, from and after the passage of this Act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the Act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and Acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.

(For further information see Use Book—Forest Service.)

SURVEYS OF MINING CLAIMS

GENERAL PROVISIONS [3a]

115. Under section 2334, Revised Statutes, the United States surveyor general " may appoint in each land district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining claims."

116. Persons desiring such appointment should therefore file their applications with the surveyor general for the district wherein appointment is asked, who will furnish all information necessary.

117. All appointments of mineral surveyors must be submitted to the Commissioner of the General Land Office for approval.

118. The surveyors general have authority to suspend or revoke the appointments of mineral surveyors at any time, for cause, and to suspend or revoke the appointments at such times as the bonds become subject to renewal under the act of March 2, 1895 (28 Stat. 808), for reasons appearing sufficient to sustain a refusal to appoint in the first instance. The surveyors, however, will be allowed the right of appeal from the action of the surveyor general in the usual manner. The appeal must be filed with the surveyor general, who will at once transmit the same, with a full report, to the General Land Office. (20 L. D. 283.)

119. (Omitted.)

120. Neither the surveyor general nor the Commissioner of the General Land Office has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner—i. e., in the local courts. The department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

[3a] See Circular No. 39, p. 1442, Circular No. 996, p. 1476 and Circular No. 1042, p. 1478.

121. The surveyors general should appoint as many competent mineral surveyors as apply for appointment, in order that claimants may have a choice of surveyors, and be enabled to have their work done on the most advantageous terms.

122. The schedule of charges for office work should be as low as is possible. No additional charges should be made for orders for amended surveys, unless the necessity therefor is clearly the fault of the claimant, or considerable additional office work results therefrom.

123. (Omitted.)

124. Mineral surveyors will address all official communications to the surveyor general. They will, when a mining claim is the subject of correspondence, give the name and survey number. In replying to letters they will give the subject matter and date of the letter. They will promptly notify the surveyor general of any change in post-office address.

125. Mineral surveyors should keep a complete record of each survey made by them and the facts coming to their knowledge at the time, as well as copies of all their field notes, reports, and official correspondence, in order that such evidence may be readily produced when called for at any future time. Field notes and other reports must be written in a clear and legible hand or typewritten, in non-copying ink, and upon the proper blanks furnished gratuitously by the surveyor general's office upon application therefor. No interlineations or erasures will be allowed.

126. No return by a mineral surveyor will be recognized as official unless it is over his signature as a United States mineral surveyor, and made in pursuance of a special order from the surveyor general's office. After he has received an order for survey he is required to make the survey and return correct field notes thereof to the surveyor general's office without delay.

127. The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

128. A mineral surveyor is precluded from acting, either directly or indirectly, as attorney in mineral claims. His duty in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the surveyor general. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent, or otherwise perform the duties of an attorney before the land office in connection with a mining claim. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths to the parties in interest. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this rule, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper surveyor general a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ chainmen interested therein in any manner.

METHOD OF SURVEY

129. The survey made and returned, must, in every case, be an actual survey on the ground in full detail, made by the mineral surveyor in person after the receipt of the order, and without reference to any knowledge he may have previously acquired by reason of having made the location survey or otherwise, and must show the actual facts existing at the time. This precludes him from calculating the connections to corners of the public survey and location monuments, or any other lines of his survey through prior surveys made by others and substituting the same for connections or lines of the survey returned by him. The term survey in this paragraph applies not only to the usual field work, but also to the examinations required for the preparation of affidavits of $500 expenditure, descriptive reports on placer claims, and all other reports.

130. The survey of a mining claim may consist of several contiguous locations, but such survey must, in conformity with statutory requirements, distinguish the several locations, and exhibit the boundaries of each. The survey will be given but one number.

131. The survey must be made in strict conformity with, or be embraced within, the lines of the location upon which the order is based. If the survey and location are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of survey to the corresponding corner of the location, and the location corner must be fully described, so that it can be identified. The lines of the location, as found upon the ground, must be laid down upon the preliminary plat in such a manner as to contrast and show their relation to the lines of survey.

132. In view of the principle that courses and distances must give way when in conflict with fixed objects and monuments, the surveyor will not, under any circumstances, change the corners of the location for the purpose of making them conform to the description in the record. If the difference from the location be slight, it may be explained in the field notes.

133. No mining claim located subsequent to May 10, 1872, should exceed the statutory limit in width on each side of the center of vein or 1,500 feet in length, and all surveys must close within 50–100 feet in 1,000 feet, and the error must not be such as to make the location exceed the stautory limit, and in absence of other proof the discovery point is held to be the center of the vein on the surface. The course and length of the vein should be marked upon the plat.

134. All mineral surveys must be made with a transit, with or without solar attachment, by which the meridian can be determined independently of the magnetic needle, and all courses must be referred to the true meridian. The variation should be noted at each corner of the survey. The true course of at least one line of each survey must be ascertained by astronomical observations made at the time of the survey; the data for determining the same and details as to how these data were arrived at must be given. Or, in lieu of the foregoing, the survey must be connected with some line the true course of which has been previously established beyond question, and in a similar manner, and, when such lines exist, it is desirable in all

cases that they should be used as a proof of the accuracy of subsequent work.

135. Corner No. 1 of each location embraced in a survey must be connected by course and distance with nearest corner of the public survey or with a United States location monument, if the claim lies within 2 miles of such corner or monument. If both are within the required distance, the connection must be with the corner of the public survey.

136. Surveys and connections of mineral claims may be made in suspended townships in the same manner as though the claims were upon unsurveyed land, except as hereinafter specified, by connecting them with independent mineral monuments. At the same time, the position of any public-land corner which may be found in the neighborhood of the claim should be noted, so that, in case of the release of the township from suspension, the position of the claim can be shown on the plat.

137. A mineral survey must not be returned with its connection made only with a corner of the public survey, where the survey of the township within which it is situated is under suspension, nor connected with a mineral monument alone, when situated within the limits of a township the regularity and correctness of the survey of which is unquestioned.

138. In making an official survey, corner No. 1 of each location must be established at the corner nearest the corner of the public survey or location monument, unless good cause is shown for its being placed otherwise. If connections are given to both a corner of the public survey and location monument, corners Nos. 1 should be placed at the corner nearest the corner of the public survey.

139. In case a survey is situated in a district where there are no corners of the public survey and no monuments within the prescribed limits, a mineral monument must be established, in the location of which the greatest care must be exercised to insure permanency as to site and construction. (See, also, provisions of par. 39*b*.)

140. The site, when practicable, should be some prominent point, visible for a long distance from every direction, and should be so chosen that the permanency of the monument will not be endangered by snow, rock, or landslides, or other natural causes.

141. The monument should consist of a stone not less than 30 inches long, 20 inches wide, and 6 inches thick, set halfway in the ground, with a conical mound of stone 4 feet high and 6 feet base alongside. The letters U. S. L. M., followed by the consecutive number of the monument in the district, must be plainly chiseled upon the stone. If impracticable to obtain a stone of required dimensions, then a post 8 feet long, 6 inches square, set 3 feet in the ground, scribed as for a stone monument, protected by a well-built conical mound of stone of not less than 3 feet high and 6 feet base around it, may be used. The exact point for connection must be indicated on the monument by an X chiseled thereon; if a post is used, then a tack must be driven into the post to indicate the point.

142. From the monument connections by course and distance must be taken to two or three bearing trees or rocks, and to any well-known and permanent objects in the vicinity, such as the confluence of streams, prominent rocks, buildings, shafts, or mouths of adits.

Bearing trees must be properly scribed B. T. and bearing rocks chiseled B. R., together with the number of the location monument; the exact point on the tree or stone to which the connection is taken should be indicated by a cross or other unmistakable mark. Bearings should also be taken to prominent mountain peaks, and the approximate distance and direction ascertained from the nearest town or mining camp. A detailed description of the locating monument, with a topographical map of its location, should be furnished the office of the surveyor general by the surveyor.

143. Corners may consist of—

First. A stone at least 24 inches long set 12 inches in the ground, with a conical mound of stone 1½ feet high, 2 feet base, alongside.

Second. A post at least 3 feet long by 4 inches square, set 18 inches in the ground and surrounded by a substantial mound of stone or earth.

Third. A rock in place.

A stone should always be used for a corner when possible, and when so used the kind should be stated.

144. All corners must be established in a permanent and workmanlike manner, and the corner and survey number must be neatly chiseled or scribed on the sides facing the claim. The exact corner point must be permanently indicated on the corner. When a rock in place is used, its dimensions above ground must be stated and a cross chiseled at the exact corner point.

145. In case the point for the corner be inaccessible or unsuitable a witness corner, which must be marked with the letters W. C. in addition to the corner and survey number, should be established. The witness corner should be located upon a line of the survey and as near as possible to the true corner, with which it must be connected by course and distance. The reason why it is impossible or impracticable to establish the true corner must always be stated in the field notes, and in running the next course it should be stated whether the start is made from the true place for corner or from witness corner.

146. The identity of all corners should be perpetuated by taking courses and distances to bearing trees, rocks, and other objects, as prescribed in the establishment of location monuments, and when no bearings are given it should be stated that no bearings are available. Permanent objects should be selected for bearings whenever possible.

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return how and by what visible evidences he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

148. The mineral surveyor should note carefully all topographical features of the claim, taking distances on his lines to intersections with all streams, gulches, ditches, ravines, mountain ridges, roads, trails, etc., with their widths, courses, and other data that may be required to map them correctly. All municipal or private improvements, such as blocks, streets, and buildings, should be located.

149. If, in running the exterior lines of a claim, the survey is found to conflict with the survey of another claim, the distances to the points of intersection, and the courses and distances along the line intersected from an established corner of such conflicting claim to such points of intersection, should be described in the field notes: *Provided*, That where a corner of the conflicting survey falls within the claim being surveyed, such corner should be selected from which to give the bearing, otherwise the corner nearest the intersection should be taken. The same rule should govern in the survey of claims embracing two or more locations the lines of which intersect.

150. A lode and mill-site claim in one survey will be distinguished by the letters A and B following the number of the survey. The corners of the mill site will be numbered independently of those of the lode. Corner No. 1 of the mill site must be connected with a corner of the lode claim as well as with a corner of the public survey or United States location monument.

151. When a placer claim includes lodes, or when several contiguous placer or lode locations are included as one claim in one survey, there must be given to the corners of each location constituting the same a separate consecutive numerical designation, beginning with corner No. 1 in each case.

152. Throughout the description of the survey, after each reference to the lines or corners of a location, the name thereof must be given, and if unsurveyed, the fact stated. If reference is made to a location included in a prior official survey, the survey number must be given, followed by the name of the location. Corners should be described once only.

153. The total area of each location and also the area in conflict with each intersecting survey or claim should be stated. But when locations embraced in one survey conflict with each other such conflicts should only be stated in connection with the location from which the conflicting area is excluded.

154. It should be stated particularly whether the claim is upon surveyed or unsurveyed public lands, giving in the former case the quarter section, township, and range in which it is located, and the section lines should be indicated by full lines and the quarter-section lines by dotted lines.

155. The title-page of the field notes must contain the post-office address of the claimant or his authorized agent.

156. In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

157. The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of

lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

158. All mining and other improvements claimed will be located by courses and distances from corners of the survey, or from points on the center or side lines, specifying with particularity and detail the dimensions and character of each, and the improvements upon each location should be numbered consecutively, the point of discovery being always No. 1. Improvements made by a former locator who has abandoned his claim can not be included in the estimate. but should be described and located in the notes and plat.

159. In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

160. If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the surveyor general supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

161. The mineral surveyor will return with his field notes a preliminary plat on blank sent to him for that purpose, protracted on a scale of 200 feet to an inch, if practicable. In preparing plats the top is north. Copy of the calculations of areas by double meridian distances and of all triangulations or traverse lines must be furnished. The lines of the claim surveyed should be heavier than the lines of conflicting claims.

162. Whenever a survey has been reported in error the surveyor may, in the discretion of the surveyor general, be required promptly to make a thorough examination upon the premises and report the result, under oath, to the surveyor general's office. In case he finds his survey in error he will report in detail all discrepancies with the original survey and submit any explanation he may have to offer as to the cause. If, on the contrary, he should report his survey correct, the surveyor general will, if necessary, order a joint survey to settle the differences with the surveyor who reported the error. A joint survey must be made within 10 days after the date of order, unless satisfactory reasons are submitted, under oath, for a postponement. The field work must in every sense of the term be a joint survey, and not a separate survey, and the observations and measurements taken with the same instrument and chain, previously tested and agreed upon.

Nothing contained in the foregoing paragraph shall be construed as intending to invest surveyors general with jurisdiction to try and determine purely adverse claims to mining ground, and the procedure herein prescribed shall not be resorted to in any case where it is apparent that the controversy is not one concerning the professional efficiency of the surveyor, or the accuracy of results achieved by the methods employed by him in the execution of the survey, but relates substantially to the relative merits of rival claims to the same parcel of ground.

163. The mineral surveyor found in error, or, if both are in error, the one who reported the same, will make out the field notes of the joint survey, which, after being duly signed and sworn to by both parties, must be transmitted to the surveyor general's office.

164. Inasmuch as amended surveys are ordered only by special instructions from the General Land Office, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

The expense of amended surveys, including amendment of plat and field notes, and office work in the surveyor general's office will be borne by the claimant.

165. The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

166. The field notes of the amended survey must be prepared on the same size and form of blanks as are the field notes of the original survey, and the word "amended" must be used before the word "survey" wherever it occurs in the field notes.

167. Mineral surveyors are required to make full examinations of all placer claims at the time of survey and file with the field notes a descriptive report, in which will be described—

(*a*) The quality and composition of the soil, and the kind and amount of timber and other vegetation.

(*b*) The locus and size of streams, and such other matter as may appear upon the surface of the claims.

(*c*) The character and extent of all surface and underground workings, whether placer or lode, for mining purposes, locating and describing them.

(*d*) The proximity of centers of trade or residence.

(*e*) The proximity of well-known systems of lode deposits or of individual lodes.

(*f*) The use or adaptability of the claim for placer mining, and whether water has been brought upon it in sufficient quantity to mine the same, or whether it can be procured for that purpose.

(*g*) What works or expenditures have been made by the claimant or his grantors for the development of the claim, and their situation and location with respect to the same as applied for.

(*h*) The true situation of all mines, salt licks, salt springs, and mill sites which come to the surveyor's knowledge, or a report by him that none exist on the claim, as the facts may warrant.

(*i*) Said report must be made under oath and duly corroborated by one or more disinterested persons.

168. The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

169. The field work must be accurately and properly performed and returns made in conformity with the foregoing instructions. Errors in the survey must be corrected at the surveyor's own expense, and if the time required in the examination of the returns is increased by reason of neglect or carelessness, he will be required to make an additional deposit for office work. He will be held to a strict accountability for the faithful discharge of his duties, and will be required to observe fully the requirements and regulations in force as to making mineral surveys. If found incompetent as a surveyor, careless in the discharge of his duties, or guilty of a violation of said regulations, his appointment will be promptly revoked.

William Spry, *Commissioner.*

Approved.

E. C. Finney, *First Assistant Secretary.*

(Laws omitted.)

[Reported, 50 L. D. 556]

Circular No. 943

PARAGRAPH 89, CIRCULAR NO. 430 OF APRIL 11, 1922, AMENDED

Department of the Interior,
General Land Office,
Washington, June 18, 1924.

Registers and Receivers, United States Land Offices.

Gentlemen: Paragraph 89 of the circular of April 11, 1922 (49 L. D. 15), is hereby amended so as to read:

(1) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the State for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $10 for each 10 lines of space occupied where publication is had in a daily newspaper, and where a weekly newspaper is used as a medium of publication $7.50 shall be the maximum charge for the same space. Such charge shall be accepted as full payment for publication in each issue of the newspaper for the entire period required by law.

It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims, Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the

Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34, T. 46 N., R. 58 E., M. D. B. and M., bears south 41° 54′ west 7285.63 feet, thence north 20° 14′ west 1500 feet to corner No. 2 of said lode; thence north 69° 46′ east 569 feet to corner No. 3 of said lode; thence south 20° 14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69° 46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20° 14′ east 1500 feet, to corner No. 4 of said lode; thence south 69° 46′ west 1,606.1 feet, to corner No. 1, Altitude No. 1 lode; thence north 20° 14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69° 46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Register.

(2) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed $12 for five publications in a weekly newspaper, or $15 for publication in a daily newspaper for 30 days. Such charge shall be accepted as full payment for all the matter so published and for the full period required.

Very respectfully,

William Spry, *Commissioner.*

Approved June 18, 1924.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 111]

Circular No. 995

AMENDMENT TO PARAGRAPH 60 OF THE MINING REGULATIONS

Department of the Interior,
General Land Office,
Washington, April 7, 1925.

Registers and Receivers, United States Land Offices in Alaska.

Gentlemen: Your attention is directed to the following act of Congress (43 Stat. 1118), amending section 4 of the act of August 1, 1912 (37 Stat. 242, 243):

[Public—560—68th Congress]

[H. R. 4148]

AN ACT To modify and amend the mining laws in their application to the Territory of Alaska, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the act of Congress of August 1, 1912, section 129 d compiled laws of Alaska, entitled "An act to modify and amend the mining laws in their application to the Territory of Alaska, and for other purposes," be amended to read as follows:

Sec. 4. That no placer mining claim hereafter located in Alaska shall be patented which shall contain a greater area than is fixed by law, nor which is longer than three times its greatest width, as determined by a transverse line drawn within the lines of the claim and at right angles to its longest side:

Provided, That where any isolated parcel or placer ground lies between and adjoins patented or validly located claims on all of its sides and is not over 1,320 feet in length, this dimensional restriction shall not apply.

Approved March 3, 1925.

In accordance with this act, that portion of paragraph 60 (*c*) of the mining regulations relative to section 4 of said act of August 1, 1912, is amended to read:

> Section 4 of the act prohibits the patenting of any placer mining claim located in Alaska after the passage of the act, which contains a greater area than that fixed by law or which is longer than three times its greatest width. The act of March 3, 1925, provides that the greatest width of a placer claim in Alaska shall be determined by a transverse line drawn within the lines of the claim and at right angles to its longest side, and that this dimensional restriction shall not apply to any isolated parcel of placer ground which lies between and adjoins patented or validly located claims on all of its sides, and is not over 1,320 feet in length. The surveyor general will be careful to observe the above requirements and will not approve any survey of a placer location which does not in area and dimensions conform to the provisions of law.

Very respectfully,

WILLIAM SPRY, *Commissioner*.

Approved April 7, 1925.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 265]

SHOWINGS BY APPLICANTS FOR PLACER PATENTS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 4, 1925.[4]

Register, Glenwood Springs, Colo.:

In reference to applications for patents filed in your office for oil shale placer mining claims, taken by legal subdivisions of the public land surveys, your attention is called to the requirements of paragraphs 41 and 60 of the Mining Regulations, Circular No. 430 (49 L. D. 15), as to the applicant showing in detail data with regard to discovery, placer character of the land, nature, value, and location of the improvements made on the claim, etc.

Paragraph 60 provides that in placer applications, in addition to the recitals necessary in and to both vein or lode or placer applications, the applicant must furnish certain data, and that since no report of a mineral surveyor is required where the claim is described by legal subdivisions, the claimant should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys. Under paragraph 41 it is provided that the application should show the precise place within the limit of each of the locations where the vein or lode has been exposed or discovered. The provisions of paragraph 41, so far as applicable, must be followed by applicants for placer mining claims, and under this the precise point of discovery on the placer claim should be given along with the points on the claim where cuts or other work has been done by the placer claimant as patent expenditure.

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[4] See Circular No. 1128, p. 847.

You are therefore authorized and directed to require every applicant for placer mining patent where the claims are described by legal subdivision to make full showing under paragraphs 41 and 60, and any application which fails to contain the required data should be held for rejection, subject to amendment or appeal within 30 days from notice of your action. Since this data is especially valuable to the inspector who may examine the claim, it should be completed and copy furnished to the division inspector at the time you give him the usual notice of the filing of the application.

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 190]

Circular No. 1128

DATA FOR USE IN FIELD EXAMINATION IN MINERAL CASES

Department of the Interior,
General Land Office,
Washington, July 14, 1927.

Registers, United States Land Offices, District Cadastral Engineers, and Division Inspectors.

Sirs: In order to facilitate examination in the field by inspectors of this department of mining claims for which applications for patents are filed, registers, where lode claims are sought to be patented, will require the applicants to furnish in duplicate the statement required by paragraph 41 of the mining regulations, relative to the kind and character of the vein or lode; whether ore has been extracted therefrom; and if so, in what amount and value, and the precise place within the limits of each claim sought to be patented, where the vein or lode has been exposed or discovered and the width thereof. The duplicate copy is to be sent to the division inspector.

The procedure in this regard, in the case of placer claims sought to be patented, is contained in the instructions of November 4, 1925 (51 L. D. 265), to the register of the Glenwood Springs land office, which instructions are hereby extended to all district land offices.

District cadastral engineers will cause to be made a copy of the description of the improvements on mining claims as contained in the field notes of survey and transmit this copy to the division inspector.

Very respectfully,

Thos C. Havell,
Acting Commissioner,

Approved July 14, 1927.

E. C. Finney,
First Assistant Secretary.

Circular No. 1189

MINERAL LOCATIONS ON STOCK DRIVEWAY LANDS—INSTRUCTIONS UNDER ACT OF JANUARY 29, 1929 (45 STAT. 1144).

Department of the Interior,
General Land Office,
Washington, May 4, 1929.

Registers, United States Land Offices.

Gentlemen: The act of January 29, 1929 (45 Stat. 1144), entitled "An act to amend section 10 of an act entitled 'An act to provide for stock-raising homesteads, and for other purposes,' approved December 29, 1916 (39 Stat. 862)," reads as follows:

> That the following be added as an additional proviso to section 10 of an act entitled "An act to provide for stock-raising homesteads, and for other purposes," approved December 29, 1916 (Public, Numbered 290, Sixty-fourth Congress):
>
> "*Provided further*, That the withdrawal from entry of lands necessary to insure access by the public to watering places reserved hereunder shall not apply to deposits of coal and other minerals in the lands so withdrawn, and that the provisions of section 9 of this act are hereby made applicable to said deposits in lands embraced in such withdrawals heretofore or hereafter made, but any mineral location or entry made hereunder shall be in accordance with such rules, regulations, and restrictions as may be prescribed by the Secretary of the Interior."

Under authority of the provisions of the act, the following rules, regulations, and restrictions are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals heretofore or hereafter made.

All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonable incident to the mining and removal of the minerals.

All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder (Circular No. 430) as modified by section 9 of the act of December 29, 1916 (39 Stat. 862).

Mining claims on lands within stock driveway withdrawals, located prior hereto and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and conditions of the act and these regulations.

Every application for patent for any minerals located subject to this act must bear on its face, before being executed by the applicant and presented for filing, the following notation:

> Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the register on the final certificates issued on such a mineral application.

Patents issued on such applications will contain the added condition:

> That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryman under said act.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved May 4, 1929.

JOS. M. DIXON,
First Assistant Secretary.

[illegible]

(DEPARTMENT OF THE INTERIOR,

[illegible]

Registers, United States Land Offices: [illegible]

[illegible] titled "An act to amend section 10 of an act entitled 'An act to [illegible] vide for stock-raising homesteads, and for other purposes,' approved [illegible]

[illegible] entitled "An act to provide for stock [illegible] poses," approved December 29, 1916 (Public, Numbered 290, Sixty-fourth Congress):

"*Provided* [illegible] withdrawal from entry of lands necessary to insure [illegible] to watering places reserved hereunder shall not apply to deposits of coal and other minerals in [illegible] withdrawn, and that the provisions of section 9 of this act are hereby made applicable to said deposits of minerals contained in such withdrawals heretofore or hereafter made [illegible] any entry made hereunder shall be in accordance with such rules, regulations, and restrictions as may be prescribed by the Secretary of the Interior."

Under authority of the provisions of the act, the following rules, regulations, and restrictions are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals heretofore or hereafter made.

All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder (Circular No. 430) as modified by section 9 of the act of December 29, 1916 (39 Stat. 862).

Mining claims on lands within stock driveway withdrawals, located prior thereto and subsequent to the date of the withdrawal, may be

MINERAL PERMITS AND LEASES[1]

[Reported, 46 L. D. 323]

Circular No. 594[2]

POTASH REGULATIONS UNDER ACT OF OCTOBER 2, 1917

Department of the Interior,
Washington, March 21, 1918.

To the Commissioner of the General Land Office.

Dear Sir: Under authority conferred by the act of October 2, 1917 (40 Stat. 297), entitled "An act to authorize exploration for and disposition of potassium," the rules and regulations herewith are prescribed to carry out the purpose of said act:

Lease regulations.
Form of application for lease.
Form of lease.
Use permit for camp site and refining works.
Form of use permit.
Patents for lands containing potash.

These regulations, together with those approved December 1, 1917, governing the issuance of "permits authorizing exploration of public lands for potassium," comprise full working instructions under said act, and you will be governed thereby in the administration thereof.

In the event of applications under this act for lands embraced within reservations, under the jurisdiction of this or any other department, they will be referred to the appropriate bureau or department for a report and recommendation; and, if it be found necessary for the protection of rights and interests created by, or incident to, said reservations, such restrictions and conditions will be made in permits and leases as may be required to effectuate such purpose.

Franklin K. Lane, *Secretary.*

Permits Authorizing Exploration of Public Lands for Potassium

(Regulations approved December 1, 1917, by First Assistant Secretary)

The act of Congress approved October 2, 1917, entitled "An act to authorize exploration for and disposition of potassium" (40 Stat. 297), authorizes the Secretary of the Interior, under such rules and regulations as he may prescribe, to issue prospecting permits for a period not to exceed two years, for the exploration of the land described therein for potash in any of the forms named in said act, and under authority thereof the following rules and regulations will govern the issuance of such permits:

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[1] All instructions involving oil and gas applications should be considered in connection with departmental instructions of Mar. 20, 1929, p. 972.

[2] Amended by Circulars Nos. 925, p. 925; 961, p. 1473; and 1056, p. 936. These instructions are now effective only as to applications filed prior to Jan. 1, 1926. See Circular No. 1120, p. 951.

1. Permits may be issued to (*a*) citizens of the United States, (*b*) an association of such citizens, (*c*) or a corporation organized under the laws of any State or Territory thereof.

2. The permit thus issued may include not more than 2,560 acres of public lands of the United States in reasonably compact form, or a similar area of lands that may have been disposed of under laws reserving to the United States the potassium deposits therein. In the latter case full compliance shall be made with the laws making such reservation.

3. The permit will confer upon the recipient the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, nitrates and salts of potassium on the lands embraced therein. In the exercise of this right the permittee shall be authorized to remove from the premises only such material as may be necessary to experimental work, and the demonstration of the existence of such deposits or any of them in commercial quantities.

4. If the permittee within the two years specified shall discover valuable deposits of one or more of the forms of potassium, as described in said act, within the area covered by his permit, such discovery shall entitle him to a patent of not to exceed one-fourth of the land embraced in the permit to be taken in compact form. The discovery of a valuable deposit of potash under this permit shall be construed as the discovery of a deposit which yields commercial potash in commercial quantities.

The remainder of the land embraced in such permit, if containing deposits of potash, will thereafter become subject to lease, under such regulations as may be found requisite in dealing with the land containing said deposit.

5. In addition to land embraced in the permit the Secretary may, in his discretion, issue to the permittee, during the life of the permit, the exclusive right to use a tract of unoccupied, nonmineral, public land not exceeding 40 acres in area, for purposes connected with and necessary to the development of the deposits covered by the permit.

6. Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, and after due notation promptly forwarded for his consideration. No specific form of application is required, but it should cover, in substance, the following points, namely:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant—by affidavit of such fact, if native born; or, if naturalized, by the certificate thereof, or affidavit as to time and place when issued; if a corporation, by certified copy of the articles thereof.

(c) Description of land for which the permit is desired by legal subdivisions if surveyed and by metes and bounds if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify and segregate the land may be required before the permit is granted.

(*d*) Reasons why the land is believed to offer a favorable field for prospecting.

(*e*) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such explorations will be prosecuted.

(*f*) Statement of the applicant's experience in operations of this nature, together with references as to his character, reputation, and business standing.

7. On the receipt of the application, if found in compliance with the terms of the act, a permit will issue and the district land officers be promptly notified thereof; thereafter no filings will be accepted for the lands embraced therein during the lifetime of said permit.

A copy of the act you will find herewith, together with a form of permit which may be modified to meet the conditions of any particular case.

FORM OF PERMIT AUTHORIZING EXPLORATION OF PUBLIC LANDS FOR POTASSIUM

The form of permit issued under this act will be, in substance, as follows:

THE UNITED STATES OF AMERICA.

Know all men by these presents that I, Franklin K. Lane, Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to authorize exploration for and disposition of potassium," approved October 2, 1917, have granted and do hereby grant a permit to ———— of the exclusive right for a period of two years from date hereof to prospect the following described lands ———— for chlorides, sulphates, carbonates, borates, silicates, nitrates, or salts of potassium, but for no other purpose, upon the express conditions as follows, to wit:

1. To begin the prospecting for said minerals within 90 days from date hereof and to prosecute diligently the exploration and experimental work during the period of such permit, in the manner and extent as follows, to wit:
2. To remove from said premises only such material as may be necessary to experimental work and the demonstraton of the existence of such deposits in commercial quantities.
3. To afford all facility for inspection of such exploratory work on behalf of the Secretary of the Interior, and to report fully, when required, all matters pertaining to the character, progress, and results of such exploratory work, and to that end to keep and maintain such accounts, logs, or other records, as the Secretary may require.
4. Not to assign or transfer the permit granted hereby, without the express consent in writing of the Secretary of the Interior.
5. To observe such conditons as to use and occupancy of the surface as may be provided by law in case any lands embraced herein have been granted with a reservation to the United States of the potassium deposits therein.

Expressly reserving to the Secretary of the Interior the right to permit for joint or several use such easements or rights of way upon, through, or in the lands covered hereby, as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in said act; and further reserving the right and authority to cancel this instrument for failure of the permittee or licensee to exercise due diligence in the execution of the prospecting work in accordance with the terms hereof.

Valid existing rights, acquired prior hereto, on the lands described herein, will not be affected hereby.

In witness whereof I have affixed my signature hereto and the seal of the Department this —— day of ————.

[SEAL.]

————————,
Secretary of the Interior.

REGULATIONS PERTAINING TO LEASES FOR LANDS CONTAINING POTASH

The act of October 2, 1917 (40 Stat. 297), authorizes the Secretary of the Interior, under such general regulations as he may adopt, to lease, for the production of the potash and other mineral deposits contained therein, public lands—

(A) Known to contain potash in commercial quantity and character and found in some or any of the forms described in said act.

(B) Embraced in any permit under which the existence of such deposits has been demonstrated, but not included in the patent awarded to the permittee.

(C) In and adjacent to Searles Lake, Calif., and by virtue of such authority, the following regulations are hereby prescribed:

(1) From and after the 20th day of December, 1917, applications for leases in the form as herein provided may be filed in the proper district land office, addressed to the Commissioner of the General Land Office for any lands in class (A) (which includes lands in Sweetwater County, Wyo., wherein the coal deposits are reserved to the United States), by citizens of the United States, an association of such citizens or corporations organized under the laws of any State or Territory thereof; the qualifications of the applicant in this respect to be fully covered by the application.

(2) Leases are authorized by the terms of the act for an area not exceeding 2,560 acres, but will be granted only for such area as may be shown, to the satisfaction of the Secretary of the Interior, to contain deposits of potash in such form and quantities as to constitute a commercial value, and will be limited to lands reasonably compact in form and described by legal subdivisions of the public-land surveys, if surveyed, or, if unsurveyed, by the approximate description they will bear when surveyed; the survey in the latter case to be made at the expense of the Government if the application for lease is otherwise found satisfactory, the descriptions of the land in the lease when granted to conform to the official survey.

(3) Applications when filed with the district land office will be promptly noted of record and transmitted to the Commissioner of the General Land Office, accompanied by a statement as to the status of the lands embraced therein. After the receipt of such applications, no applications, filings, or selections for the lands embraced therein will be permitted until so directed, except applications for leases under this act.

(4) When an application for a lease is filed in the district land office, notice thereof shall be published at the expense of the applicant in a general newspaper to be designated by the register, published at the capital of the State, describing the lands embraced therein, stating the purpose of the application and that it will be submitted to the Commissioner of the General Land Office for action within 30 days from the date fixed therein, advising all adverse claimants or protestants that if they desire to object or protest any interests as against the application, prompt action to that end should be taken; and further advising the public that any other applications for lease of the same lands may be filed at any time during said period of publication, without publication of notice of said second or further application, in which case, applications so filed will be

considered as prescribed in section 5 hereof. Proof of publication will be required prior to action by the commissioner on the application for lease.

(5) On the receipt of the application or applications in the General Land Office, the same will be considered, investigation made if deemed necessary, and submitted to the Secretary of the Interior with appropriate recommendation and report as to the proper action to be taken thereon, giving due consideration to the proposed effectual development of the alleged potash deposits and the amount of capital to be invested therein; the award of priority in case of conflicting applications to be determined by the respective proposed investments, date of productive development proposed by the several applicants, and any equities that may exist in one or more of the applicants resulting from improvement or development under claims made under other laws.

(6)[3] The lands in class (B), if containing potash in some or any of the forms specified in said act, will be offered for leasing by publication for a period of 30 days in a newspaper designated by the register of the proper land district, published at the capital of the State, inviting applications therefor, on or before a date specified. Applications for such excess permit lands will be considered without further notice, and leases awarded thereunder in general accordance with the provisions of paragraph 5 herein. Lands once included in a published notice of leasing offer, remaining unleased, may thereafter be applied for without publication of notice.

(7) The verity of all representations contained in applications for leases shall be deemed an essential thereto, and a moving consideration to the award of a lease, if such action is taken. Misrepresentations in this respect will be treated as a proper ground for proceedings in forfeiture, as provided in section 8 of the act.

(8) The acceptance of a lease under the provisions of this act will be construed as a waiver and relinquishment of all claims on the part of the applicant for any lands embraced within said lease and claimed under the provisions of any other law.

(9) If the application for lease covers deposits of potassium, referred to in section 9 of the act, reserved to the United States, the applicant will be required, among other things, as a condition precedent to the granting of a lease, to furnish a bond to indemnify and protect the agricultural claimant.

(10)[4] Lands in class (C) will not be open to lease until such time as final action has been taken upon the claims now pending before the department.

(11) A form of application, proposed form of lease and copy of the act of October 2, 1917, will be found herewith.

FORM OF APPLICATION FOR LEASE

Blank forms for applications for lease will not be furnished, but such applications should follow substantially the form given below:

The undersigned ____________, resident of ______, a ______ [native born or naturalized; if the latter, furnish certificate; if a corporation, certified articles thereof] hereby appl____ under the provisions of the act approved October 2,

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[3] See amendment, p. 936. Also see instructions of Oct. 19, 1929, p. 1149.
[4] See added paragraph 10 a, p. 925.

1917, (40 Stat. 297), for a lease of certain potassium-bearing lands described as follows: ________ section, ____ township, ____ range, ____ meridian, in ____ land district, ______ County, ______ aggregating ______ acres.

The deposit of potassium which it is proposed to develop is found in the following form: ____ and the methods to be adopted in its development, production, and preparation for market are as follows: ______

If a lease be granted, the applicant proposes to invest not less than ______ dollars during the first four years of such lease, not less than one-fourth each year, in said above-described operations, and to begin active development work to that end not later than ______ after the granting of such lease.

The applicant neither holds nor owns any interest or interests, as a member of an association or associations, or as a stockholder in a corporation or corporations, or otherwise, in any lease under said act, or in any application for lease thereunder, which, together with the area described in this application, exceeds in the aggregate in any area 50 miles square, an amount equivalent to 2,560 acres of land; nor holds more than one-tenth interest, direct or indirect, in any agency, corporate or otherwise, engaged in the sale or resale of the products to be obtained from the lands herein applied for if a lease be awarded hereunder.

As to character, business, and financial standing of the applicant , reference is hereby made to ______.

If awarded a lease hereunder, a satisfactory bond as required by the regulations, will be furnished within the time specified.

Post-office address of applicant is ____________.

______ ______.

Subscribed and sworn to by ______ before me, a ______, this ______ day of ______ 19____.

______ ______.

FORM OF LEASE OF POTASH LANDS

(Under the act of October 2, 1917)

This indenture of lease entered into, in triplicate, this ______ day of ______, A. D. 19__, by and between the United States of America, acting in this behalf by ______, Secretary of the Interior, party of the first part, hereinafter called the lessor, and ______ ______, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved October 2, 1917 (40 Stat. 297), entitled "An act to authorize exploration for and disposition of potassium," hereinafter referred to as the act, which is made a part hereof, witnesseth:

SECTION 1. That the lessor, in consideration of the rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine, remove, and dispose of all the potassium and other minerals in, upon, or under the following-described tracts of land situated in the county of ______, State of ______, and more particularly described as follows, to wit:

______, containing ______ acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, or reservoirs necessary to the full enjoyment hereof, together also with the right to use any timber, stone or other materials on said land in connection with the operations to be conducted hereunder, for an indeterminate period, upon condition that at the end of each 20-year period succeeding the date hereof such readjustment of terms and conditions may be made as the party of the first part may determine: *Provided*, That this lease shall extend only to or include any right or interest in the lands, or the minerals therein, reserved to the United States under any entry that may be allowed, or patent that may issue or may have issued, with a reservation of certain specified minerals to the United States. (For leases in Sweetwater County, Wyo., insert reservation of coal.)

SEC. 2. In consideration of the foregoing the lessee hereby agrees:

(*a*)[5] To invest ______ dollars within four years from the date hereof, not less than one-fourth thereof to be expended during each of said four years, in the substantial development and production of the deposits of potassium and other minerals in the land above described, or in the reduction, manufacture, and preparation of such mineral products for market, and to furnish a bond with a specified corporate surety in the sum of one-tenth of the proposed investment, but in no case less than $5,000, conditioned upon the performance of such agreement; such development, reduction works or other improvements for which said investment and expenditures are to be made shall, subject to agreed modifications to meet future conditions, in general, consist of the following: ------

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[5] See amendment, p. 925.

(*b*) To pay a royalty of the percentage hereinafter stipulated of the gross value of any and all salable mineral products from the lands covered hereby at the point of shipment, or on demand of the lessor, its equivalent in the products of this lease f. o. b. at the point of shipment. (Special provisions defining and construing "point of shipment" and "gross value," depending on the conditions in each case, will be here inserted.) Such royalty shall be equal to 2 per cent of such gross value during the first 10 years of the lease, and 3 per cent thereafter up to the first adjustment period at the end of the first 20 years of the lease, payable monthly, the royalties for each month to be paid during the next succeeding month to the receiver of the United States land district in which the land is situated, or, if not in a land district, to the Commissioner of the General Land Office: *Provided*, That royalties over 2 per cent may be reduced by the lessor on proper showing made.

(*c*) To pay the receiver of the district land office on all leases annually, in advance, beginning with the date of the execution of the lease, the following rentals: Twenty-five cents per acre for the first year; thereafter 50 cents per acre for the second, third, fourth, and fifth years, respectively; and $1 per acre for each and every year thereafter during the continuance of the lease, such rental for any year to be credited against the royalties as they accrue for that year.

(*d*) To pay when due all taxes assessed and levied under the laws of the State upon the improvements, output of mines, or other rights, property or assets of the lessee.

(*e*) To furnish monthly certified statements in detail in such form as may be prescribed by the lessor of the amount and value of output from the leasehold at the "point of shipment" as a basis for determining amount of royalties. All books and accounts of the lessee shall be open at all times for inspection by any duly authorized officer of the department. Falsification of such statements shall be a basis for action for the cancellation of the lease.

(*f*) To furnish annually a plat in the manner and form prescribed by the Secretary of the Interior showing all prospect and development work on the leased lands, and other related information, with a report as to all buildings, structures or other works placed in or upon said leased lands, or on lands covered by permit issued under section 3 of the act, as well as any buildings, reduction works or equipment situated elsewhere and owned or operated in conjunction with, or as a part of, the operations conducted hereunder, accompanied by a report, in detail, as to the stockholders, business transacted, assets and liabilities of the lessee, together with a statement of the amount of potassium and other minerals produced and secured by operations hereunder, and the cost of production thereof.

(*g*) Where the minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of leased lands without permission from the Secretary of the Interior.

(*h*) To develop and produce in commercial quantities, with reasonable diligence, the potassium and other mineral deposits susceptible of such production in the lands covered hereby; to carry on all mining, reducing, refining, and other operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard to the health and safety of miners and other employees, the prevention of waste and the preservation and conservation of the property for future productive operations, observing all State laws relative to the health and safety of such workmen and employees, all mining and related productive operations to be subject to the inspection of the lessor.

(*i*) To deliver up to the lessor on the termination of this lease, as a result of forfeiture thereof pursuant to section 8 of the act, the lands covered hereby, together with any land permission for the use of which has been granted under and pursuant to the provisions of section 3 of said act, including all fixtures, improvements, and appurtenances, other than machinery, tools, and personal property, located and used above ground, situate on any of said lands, in good order and condition, so as to permit of immediate continued operation to the full extent and capacity of the leased premises: *Provided*, That on such forfeiture the lessor, his agent, licensee or lessee shall have the exclusive right, at the lessor's option, and at any time within six months from such forfeiture, to purchase such machinery, tools, and personal property located and used above ground, the purchase price thereof to be determined in the manner prescribed in section 5 of this lease.

(*k*) To comply with all statutory requirements where the surface of the lands embraced herein has been disposed of under laws reserving to the United States the potassium deposits therein.

(*l*) Not to assign or sublet, without the consent of the Secretary of the Interior, the premises covered hereby.

(*m*) To observe faithfully the provisions of section 5 of the act whereunder this lease is executed as to the interest or interests that may be taken or acquired under leases authorized by said act.

SEC. 3. The lessor expressly reserves—

(*a*) The right to permit for joint or several use such easements or rights of way upon, through, or in the lands hereby leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act; and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(*b*) The right to dispose of the surface of the lands embraced herein under existing law, or laws hereafter enacted, in so far as said surface is not necessary for use of the lessees in extracting and removing the deposits therein.

(*c*) The right on the part of the President of the United States to regulate the price of all mineral extracted and sold from the leased premises, so that the price or prices fixed shall be such as to yield a fair and reasonable return to the lessee upon his investment, and secure to the consumer any of such products at the lowest price reasonable and consistent with the provisions hereof; also the right so to regulate the disposal of the potassium products produced hereunder as to secure its distribution and use wholly within the limits of the United States or its possessions.

SEC. 4. The lessee may, on consent of the Secretary of the Interior first had obtained, surrender and terminate this lease at any time after the first four years of the term herein provided for, by giving six months' notice in writing to the lessor, and upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that all other creditors or others having an interest are fairly and equitably protected, and that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered hereby: *Provided*, That in such case the right of valuation and purchase accorded the lessor in the section next following (5) shall be exercised within said period of six months.

SEC. 5. That on the termination of this lease, pursuant to the last preceding section, the lessor, his agent, licensee, or lessee shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all buildings, machinery, equipment, and tools, whether fixtures or personalty, placed by the lessee in or on the land leased hereunder, or on lands covered by permit under section 3 of the act, save and except underground improvements, machinery, equipment, or structures, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid, shall be fixed by appraisal of three disinterested and competent persons, (one to be designated by each party thereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings or other property shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said underground equipment and structures, as aforesaid.

SEC. 6. If the lessee shall fail to comply with the provisions of the act or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at date hereof, and such default shall continue for 90 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 8 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

SEC. 7. The lessee further agrees and covenants that the obligations entered into hereby shall extend to and be binding upon his heirs and successors in interest hereunder.

SEC. 8. It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part of this lease or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By ———————— [L. S.]
Secretary of the Interior.

Witnesses:

------ ------ ------ ------ [L. S.]
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USE PERMITS FOR CAMP SITE AND REFINING WORKS

Section 3 of the act of October 2, 1917, "To authorize exploration for and disposition of potassium," provides:

> That in addition to areas of such mineral land to be included in prospecting permits or leases, the Secretary of the Interior, in his discretion, may issue to a permittee or lessee under this act the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land not exceeding 40 acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

In accordance with the provisions of this section the following regulations are prescribed, by which a permittee or lessee under the act may acquire the right therein granted.

1. Application may be made by the permittee or lessee identifying by serial number his permit or lease, setting forth in detail the specific reasons why it is necessary for the applicant to have the use of an additional tract of land for a camp site, refining works or other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

2. The application should contain a description of the lands by legal subdivisions, if surveyed, or, if not surveyed, by the approximate description thereof as it will appear when surveyed, for which the right of use is desired, together with a statement of the particular reasons why it is especially adapted thereto, either in point of location, topography, or otherwise, and that it is unoccupied nonmineral land.

3. Use permits granted hereunder will be for indeterminate periods, dependent in that respect upon the existence of the permit or lease made the basis of the right authorized by section 3. Upon the

termination of such permit or lease all rights secured hereby will also cease and terminate, and such condition shall be expressly recognized and stated in the application.

4. No blank forms of application will be furnished to applicants hereunder, but they will be guided by the foregoing as to the essential requirements of the application, which will be verified by the affidavit of the applicant.

FORM OF USE PERMIT FOR CAMP SITE OR REFINING WORKS

The form of use permit issued under section 3 of the act of October 2, 1917, will be in substance as follows:

THE UNITED STATES OF AMERICA:

Know all men by these presents that I, Franklin K. Lane, Secretary of the Interior, under and by virtue of section 3 of the act of Congress entitled "An act to authorize exploration for and disposition of potassium," approved October 2, 1917, have granted and do hereby grant to ______, the holder of ______, bearing serial number ____, the exclusive right to use, during the life of the aforesaid ______, the following-described tract of land, to-wit: __________ for a camp site, refining works and other purposes connected with and necessary to the proper development and the use of the deposits covered by the aforesaid ______, all rights hereunder to cease and terminate upon the termination of the aforesaid ______.

In witness whereof I have affixed my signature hereto and the seal of the department this ____ day of ____.

[SEAL.]

______ ______,
Secretary of the Interior.

PATENTS FOR LANDS CONTAINING POTASH

(*a*) *Claims under existing mining laws.*—Valid claims existent on October 2, 1917, and thereafter maintained in compliance with the laws under which initiated may be perfected and patented under the provisions of the general mining laws and the regulations thereunder.

In addition to the usual proofs required by said laws and regulations, claimants, under all pending and future applications based on valid claims, must submit evidence showing that the assessment work has been annually performed up to and including the year preceding that in which the entry certificate is issued. Such proof may be made by filing the original or authenticated copies of the proofs of annual labor of record in the local recording office, provided such proofs are definite and specific. Where such evidence is not available, a sufficient corroborated affidavit, describing the nature and giving the approximate cost and reasonable value of the work done each year upon or for the benefit of each claim included in the application for patent, will be accepted. Similar proof must be furnished in support of all pending cases, where the entry certificates are outstanding, before such entries will be approved for patent, all else being regular.

(*b*) *Claim resulting from discovery under permit.*—A permittee (or the assignee or transferree of a permittee in those cases where the consent to the assignment or transfer of the permit has been authorized by the Secretary), who has discovered valuable deposits of one or more of the substances enumerated in section 1 of the act, within the area covered by, and the two years specified in, the permit, shall file, in the proper local land office an application, under oath, for a patent for the land desired by him in the exercise of his right to a patent, as discoverer, which land, including the discovery on which the right to a patent is predicated, shall not exceed one-fourth of the area embraced in the prospecting permit, and shall be taken in compact form and described by legal subdivisions; or, if the land is unsurveyed, then in a tract which shall not exceed 2 miles in length, described by metes and bounds and by reference to regular survey corners, if practicable, or by the approximate description the lands will bear when surveyed, to the end that the location of the land desired can be readily determined on the ground.

Application for patent may be filed by the permittee at any time during the two years specified in the permit or 30 days thereafter. No right in the permittee or in the assignee of the permittee to patent any part of the land embraced in the permit will be recognized where the application for patent is not filed within the period herein prescribed. Application for patent and proof in support thereof by the assignee must be made within the same time as though there had been no assignment.

Applications for patents will be properly noted of record by the local land officers, and, prior to the issuance of the order of publication of notice of application for patent, will be, by special letter, transmitted to the Commissioner of the General Land Office, accompanied by a statement as to the status of the land embraced in the application for patent. After the receipt of such application, no applications, filings, or selections for the lands embraced therein will be permitted until so directed, nor will publication of the aforesaid notice be ordered until receipt of instructions with regard thereto from the Commissioner of the General Land Office.

After application for patent, in case the land is unsurveyed, an estimate will be made of the approximate cost of survey, including necessary office work incident thereto, of which the applicant will be duly notified, which amount applicant will deposit, as required by section 2 of the act, with any Assistant United States Treasurer or designated depository in favor of the United States Treasurer, to be passed to the credit of "Deposit of individuals for survey of public lands," and file with the surveyor general duplicate certificates of such deposit in the usual manner. Additional amounts will be deposited if necessary. Such survey will, if all be regular, be made by United States surveyors, by or under the direction of the supervisor of surveys and the United States surveyor general. As far as practicable all such surveys will be an extension of the regular Government surveys, after which the applicant will be required to conform his boundaries thereto. Special instructions for each such survey will be issued by the surveyor general.

Except as otherwise provided in these regulations, the procedure to be followed by the applicant-permittee to obtain patent shall be conformable to that provided by the regulations for obtaining patent to mining claims, under the general mining laws, as to filing the application, payment of fee of $5 to each the register and receiver, posting and publication, proof of mineral discovery, character of minerals, formation, etc., except that proof of patent expenditure of not less than $500 in improvements will not be required, nor statement of fees and charges, nor payment of any purchase money for the land, and publication will be required for only 30 days.[b] The discovery of a valuable deposit of potash under applicant's permit shall be construed as the discovery of a deposit which yields commercial potash in commercial quantities. The applicant must show under oath all facts in support of his claim for patent, giving kinds of minerals discovered, character and extent of the deposits, together with a showing of the facts relative to transportation facilities, water supply, possible process of manufacture, and other factors which make the alleged discovery commercially valuable.

It will be noted that said act of October 2, 1917, makes no provision for determining adverse claims through the institution of adverse suits in local courts, hence all such claims, if any, and upon the filing of sufficient and proper protests, will be determined by the Land Department. The "Rules of Practice in cases before the United States District Land Offices, the General Land Office, and the Department of the Interior" will, as far as applicable, govern in the handling and disposition of protests.

If all be regular patent shall issue only for such portions of the premises applied for, as aforesaid, (or for the reserved mineral deposits in land applied for where the surface thereof has been disposed of with reservation of the potash deposits to the United States), as are shown to the satisfaction of the Government to be valuable for the potash therein contained.

(Act omitted.)

[Reported, 47 L. D. 424]

CIRCULAR No. 671

OIL-SHALE REGULATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 11, 1920.

Registers and Receivers, United States Land Offices.

SIRS: Section 21 of the act of Congress approved February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," authorizes the Secretary of the Interior to lease any deposits of oil shale belonging to the United States, and the surface of such lands as may be necessary for the extraction and reduction of the minerals leased. The following rules and regulations will govern the issuance of such leases:

1. *Qualifications of applicants.*—Pursuant to section 1 of said act, leases may be made to (*a*) a citizen of the United States; (*b*) an association of such citizens; (*c*) a corporation organized under the laws of the United States, or of any State or Territory thereof; or (*d*) a municipality.

2. *Lands and deposits to which applicable.*—The lease may include such deposits and the surface of so much of the land containing

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[b] See instructions of Oct. 19, 1929, p. 1149.

same, or of land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, the aggregate area not to exceed 5,120 acres.

Such leases may not include lands or deposits in (*a*) national parks, (*b*) forest reserves created under the act of March 1, 1911 (36 Stat. 961), known as the Appalachian forest reserve act, (*c*) lands in military or naval reservations, (*d*) Indian reservations, or (*e*) ceded or restored Indian lands, the proceeds from the disposition of which are credited to the Indians.

All permits or leases for the exploration for or development of oil-shale deposits under this act within the limits of national forests or other reservations, or withdrawals to which this act is applicable, shall be subject to and contain such conditions, stipulations, and reservations as the Secretary of the Interior shall deem necessary for the protection of such forests, reservations, or withdrawals, and the uses and purposes for which created.

3. *Form and contents of application.*—Applications for leases must be under oath, and should be filed in the proper district land office, addressed to the Commissioner of the General Land Office. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant, by affidavit of such fact if native born; if naturalized, by a certified copy of a certificate thereof in the form provided for use in public land matters, unless such copy is on file. If the applicant is an association, each member thereof must show his qualifications as above stated; if a corporation, a certified copy of the articles of incorporation must be filed, together with a showing as to the residence and citizenship of its stockholders; if a municipality a showing of (1) the law or charter and procedure taken by which it has become a legal body corporate; (2) that the taking of a permit or lease is authorized under such law or charter; and (3) that the action proposed has been duly authorized by the governing body of such municipality.

(*c*) A statement that the applicant has no lease under the provisions of this section, nor any other application for lease thereunder pending, and that he does not hold interests in such leases or applications which, with the land applied for, will exceed 5,120 acres.

(*d*) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the United States surveyor general of the State where the land is located the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(*e*) Evidence that the land is valuable for its oil-shale content, except so much thereof as is necessary for the extraction and reduction of the leased materials, with a statement as accurate as may be of the character and extent and mode of occurrence of the oil-shale deposits in the lands applied for.

(*f*) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(*g*) The application shall be accompanied by a notice for publication, in duplicate, prepared for the signature of the register, in substantially the following form:

Serial No. ----
DEPARTMENT OF THE INTERIOR,
U. S. LAND OFFICE AT------,
------ ---- 19--.

NOTICE OF APPLICATION FOR OIL-SHALE LEASE

Notice is hereby given that in pursuance of the act of Congress, approved February 25, 1920, ------ ------ whose post-office address is ------ has made application for oil-shale lease covering the following described lands: ------.

Any and all persons claiming adversely any of the above-described lands are required to file their claims in this office on or before ------, otherwise their claims will be disregarded in the granting of such lease.

------ ------ *Register.*

The register will fix the time within which adverse or conflicting claims may be filed at not less than 30, nor more than 40 days from first publication.

4. *Disposition of application.*—(*a*) The application will be given the current serial number by the register and receiver, noted on their records, and the notice for publication will be signed by the register.

(*b*) One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the register, of general circulation, and best adapted to give the widest publicity, in the county where the land is situated. If the land is in two or more counties, notice must be published in each. Notice must also be posted in the local land office during the period of publication.

(*c*) At the expiration of the period of publication the application, together with evidence of publication and posting in said office, should be promptly transmitted by the register and receiver to the Commissioner of the General Land Office with a statement of the status of the land involved as to conflicts, withdrawals, protests, and any other matters that may be necessary to determine the availability of the land or deposits therein for lease.

5. *Action on application.*—As the area and form of lands leased hereunder is entirely discretionary with the Secretary of the Interior, if the area applied for is considered too large, or the form unsatisfactory, or in case of conflicting applications, the application may be held for rejection, but the applicant given an opportunity to amend his application in conformity with requirements. Should the application be found satisfactory by the Commissioner of the General Land Office, he will submit it to the Secretary of the Interior with a recommendation that a lease for the described lands be awarded the applicant. If the right to a lease be granted, the applicant will be required, within 30 days from notice, to pay the rental of 50 cents per acre for the first year, which the receiver will

carry in his unearned account, until the lease is acted upon, and to furnish a lease duly executed on his part, which lease will be substantially in the following form:

6. *Form of lease—*

DEPARTMENT OF THE INTERIOR,
Serial No. ----. UNITED STATES LAND OFFICE AT ------.

OIL SHALE LEASE

Date—Parties.—This indenture of lease entered into in triplicate this ---- day of ------, 192--, by and between the United States of America, acting in this behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and ------ ------, party of the second part, hereinafter called the lessee, under and pursuant to the act of Congress approved February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," witnesseth:

1. *Purposes.*—That the lessor in consideration of the rents and royalties to be paid, and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee the right and privilege to mine and dispose of all the oil shale or the products thereof that may be mined under the terms of this lease from the following described lands ------, containing ------ acres, together with the right to construct thereon all such works as may be necessary or convenient for the reduction of such shale and the preparation of its oil or other contents for market.

2. *Subject to limitations of act.*—It is expressly understood that this lease is granted subject in all respects to the conditions, limitations, and provisions of the act under which this lease is made, which act, so far as it relates to oil shale, is hereby made a part hereof to the same extent as if incorporated herein.

3. *Rights reserved.*—The lessor expressly reserves the right to grant, upon such terms as the Secretary may determine to be just, such easements or rights of way, including easements in tunnels, upon, through, or in the lands leased, as may be necessary to the working thereof, or of other lands containing coal, oil, oil shale, phosphate, gas, or sodium, and the treatment or shipment of any of the products of such lands by, or under authority of the United States, its lessee or permittee, and for other public purposes.

4. The lessee, in consideration of the lease of the rights and privileges aforesaid, hereby covenants and agrees as follows:

(*a*) *Investment.*—To invest in mining operations, reduction plants, or other equipment for the mining and reduction of the minerals leased, as follows: That is to say [Here give detailed description of proposed reduction plant and other equipment or works], upon the lands included herein the sum of ------ dollars, of which sum not less than one-fifth be expended during the year succeeding the execution of this instrument, and a like sum each year for the succeeding four years, unless such amount may be sooner invested.

(*b*) *Bond.*—To furnish within 30 days after signature of the lease a bond in the sum of one-half the amount to be expended each year, conditioned upon the expenditure of such sum within said period, and submit annually at the expiration of each year for the said period an itemized statement as to the amount and character of the expenditure during said year.

(*c*) *Annual rentals.*—To pay as an annual rental, for each acre or part thereof covered by this lease, the sum of 50 cents per acre each year during the life of this lease, all such annual payments of rental to be paid in advance to the receiver of the proper local land office on the anniversary of the date hereof, and to be credited to the first royalties becoming due hereunder during the year for which rental was paid, unless during any of the first five years of the existence of the lease the lessor waives the payment of royalty or rental.

(*d*) *Royalty.*—To pay to such receiver a royalty of ------ per centum of the market value of the commercially extractable crude oil content, and other primary products of all shale mined and sold or reduced, unless the Secretary of the Interior waves the payment of such royalty during any or all of the first five years of the lease. The lessee agrees to make and keep a record of, by methods and practices satisfactory to the lessor, all necessary gagings, measurements, or analyses of all shale mined and sold or reduced, and all products manufactured therefrom by the lessee, to afford an adequate basis for computing and ascertaining the amount and grade of the crude and other primary products on the basis of which such royalty is to be paid; the decision of the Secretary of the Interior as to the market value of such products on which the royalty is computed shall be conclusive. The royalty must be paid on the last day of March, June, September, and December, each payment to cover the royalty on all production during the preceding three months.

(*e*) *Reports.*—To keep accurate account of the amount and value of the production under the lease, and to make a report on the last day of March, June, September, and December of the amount and value of the production during the preceding three months; also the amount invested in the property, the cost of operation, contracts in force as to disposal of proceeds, and depreciation of the property used in working the leased land; the books, records, property leased, and reduction works to be subject to inspection at any time by an accredited agent of the lessor.

(*f*) *Sublease.*—Not to assign this lease or any interest therein, nor sublet any portion of the leased premises, or any of the rights and privileges herein granted without the written consent of the lessor being first had and obtained.

(*g*) *Diligence.*—To proceed diligently to develop and mine the oil shale upon the leased lands and extract therefrom the oil and other valuable contents by the most approved methods, and in such a manner as to utilize all of the shale that can be successfully mined, leaving no available mineral abandoned where the mining is being conducted.

(*h*) *Regulations.*—To comply with such regulations as have been adopted by the Secretary of the Interior and were in force at date of this lease relative to (1) the safety and welfare of the workmen; (2) the prevention of undue waste; and (3) the exercise of reasonable diligence, skill, and care in the conduct of mining operations, which are made a part hereof as fully as if incorporated in this lease; it is also agreed that the workday shall not exceed eight hours for underground workers, except in cases of emergency, prompt report of which must be made to the lessor; that no boy under 16 years of age, nor any girl or woman shall be employed in any mine below the surface; that the workmen shall have absolute freedom to purchase their supplies wherever they may desire; that wages shall be paid twice each month in lawful money of the United States.

(*i*) *Interest in leases.*—To observe faithfully the provisions of section 27 of the act, defining the interest or interests that may be taken, held, or exercised under leases authorized by the act.

5. *Prevention of monopoly.*—The lessor reserves full power and authority to carry out by order and to enforce all the provisions of section 30 of the act, to insure the sale of the production of such lands to the United States and to the public at reasonable prices, and for the prevention of monopoly, and the lessee hereby covenants and agrees to comply with any such reasonable order issued in pursuance hereof.

6. *Relinquishment.*—The lessee, upon consent in writing of the lessor, may make a written relinquishment of all rights under the lease, and thereupon be relieved of all future obligations hereunder, or he may with like consent surrender any legal subdivisions of the area included herein, upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered by such relinquishment.

7. *Purchase of improvements.*—On the termination of this lease pursuant to the last preceding section, the lessor, his agent, licensee, or lessee, shall have the exclusive right, at the lessor's election, to purchase, at any time within six months, at the appraised value thereof, all buildings, machinery, equipment, and tools, or other personalty placed by the lessee in or on the land leased hereunder, save and except underground improvements, machinery, equipment, or structures, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party hereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six

months none of said buildings or other property shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said underground equipment and structures as aforesaid.

8. *Forfeiture.*—If the lessee shall make default in the performance of any of the terms, covenants, and stipulations of this lease, and such default shall continue after written notice thereof by the Secretary of the Interior or his authorized representative, the lessor may, by appropriate proceedings, have this lease forfeited and canceled in a court of competent jurisdiction, but this provision shall not be construed as depriving the lessor of any legal or equitable remedy which the lessor would otherwise have. A waiver of any particular cause for forfeiture shall not affect the right to proceed against the lessee for any other cause of forfeiture or for the same cause occurring at any other time.

9. *Heirs and successors.*—It is further agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

10. *Readjustment of royalties.*—The lessor shall have the right to readjust and fix the royalties payable hereunder at the end of 20 years from the date of this lease, and to so readjust at the end of each succeeding period of 20 years, but the lessee may, if dissatisfied with the royalties imposed, relinquish and surrender this lease in the manner provided in sections 6 and 7 hereof.

11. *Unlawful interest.*—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part of this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States, approved March 4, 1909, (35 Stat. 1109), relating to contracts, enter into and form a part of this lease, so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By ------ ------ [L. S.]
Secretary of the Interior.

Witnesses:

------ ------ ------ ------ [L. S.]
------ ------ ------ ------
------ ------ ------ ------
------ ------ ------ ------

7. *Preferred right to a lease.*—Under a proviso of section 21 of the act, a person having a valid claim to oil shale deposits under existing law, prior to January 1, 1919, shall, upon the relinquishment of such claim or claims, be entitled to a lease for not exceeding 5,120 acres, provided " that no claimant for a lease who has been guilty of any fraud, or who had knowledge or reasonable ground to know of any fraud, or who has not acted honestly and in good faith, shall be entitled " to such lease.

The beneficiaries of this proviso are those persons or their grantors who, in the honest belief that the mining laws were applicable to oil shale deposits, have proceeded in absolute good faith to make mineral locations, lode or placer, of shale deposits, and who have, in all respects, fully complied with the provisions and requirements of such laws, including discovery.

The same form of procedure in making applications for lease should be followed as in other cases, except that, in addition to the points referred to in section 3 of any ordinary application, an application for a preference-right lease should be accompanied by a full and detailed showing under oath, duly corroborated, of the facts on which the applicant claims a preferred right, together with copies of the location notices, abstracts of title, and such other evidence as may be deemed necessary to establish the claimant's preferred right and entire absence of fraud. Claimants of such preferred rights to leases should present same promptly; otherwise the lands may be leased to others, in which case any preference rights under this proviso will be deemed to have lapsed.

FEES AND COMMISSIONS

Under the authority of section 38 of the act, the following fees and commissions are prescribed for transactions under the act:

(*a*) For receiving and acting on each application for a permit, lease, or other right filed in the district land office in accordance with these regulations there shall be paid a fee of $2 for every 160 acres, or fraction thereof, in such application, but such fee in no case to be less than $10, the same to be paid by the applicant and considered as earned when paid, and to be credited in equal parts on the compensation of the register and receiver within the limitations provided by law.

(*b*) A commission of 1 per cent of all moneys received in each receiver's office to be equally divided between the register and receiver; such commission will not be collected from the applicant, lessee, or permittee in addition to the moneys otherwise provided to be paid.

(*c*) It should be understood that the commission here provided for will not affect the disposition of the proceeds arising from operations under the act as provided in section 35 thereof; also that such commission will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved March 11, 1920.

ALEXANDER T. VOGELSANG,
Acting Secretary.

(Act omitted.)

[Reported, 47 L. D. 437]

CIRCULAR NO. 672 [9]

[Reprint as amended to October 29, 1920]

OIL AND GAS REGULATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 11, 1920.

Registers and Receivers, United States Land Offices.

SIRS: Under the authority of the act of Congress approved February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," the following rules and regulations are prescribed for the administration of the provisions of said act relative to oil and gas:

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[9] Amended by Circulars Nos. 761, p. 916; 905, p. 923; 1036, p. 935; 1073, p. 937; 1094, p. 939; 1111, p. 948 (with explanatory letter of Mar. 18, 1927, p. 950); and 1129, p. 962. See departmental orders No. 337, p. 971, and 338, p. 972.

1. OIL AND GAS PERMIT

Section 13 of the act authorizes the Secretary of the Interior to grant a qualified applicant the exclusive right to prospect for oil or gas for the period of two years, unless extended, and under authority thereof the following rules and regulations will govern the issuance of such permits:

1. Qualifications of applicants.—Pursuant to section 1 of the act, permits may be issued to (*a*) a citizen of the United States; (*b*) an association of such citizens; (*c*) a corporation organized under the laws of the United States or of any State or Territory thereof; or (*d*) a municipality.

2. Lands to which applicable.—The permit thus issued may include not more than 2,560 acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field, the lands applied for to be taken in a reasonably compact form, by legal subdivisions if surveyed, and in an approximately square or rectangular tract if unsurveyed, the length of which must not exceed two and one-half times its width. Incontiguous tracts within a limited radius may be included in a permit when conditions are such that, because of prior disposals, a reasonable area of contiguous land can not be procured.

Such permits may not include land or deposits in (*a*) national parks; (*b*) forests created under the act of March 1, 1911 (36 Stat. 961), known as the Appalachian Forest Reserve act; (*c*) lands in military or naval reservations; or (*d*) Indian reservations. The application of the act to ceded Indian lands depends on the laws controlling their disposition.

All permits or leases for the exploration for or development of oil or gas deposits under this act within the limits of national forests or other reservations or withdrawals to which this act is applicable shall be subject to and contain such conditions, stipulations, and reservations as the Secretary of the Interior shall deem necessary for the protection of such forests, reservations, or withdrawals, and the uses and purposes for which created.

The boundaries of the geological structures of producing oil or gas fields will be determined by the United States Geological Survey, under the supervision of the Secretary of the Interior, and maps or diagrams showing same will be placed on file in local United States land offices.

It should be understood that under the act, the granting of a prospecting permit for oil and gas is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or in its entirety, as the facts may be deemed to warrant.

3. Permits or leases for other materials.—The granting of a permit or lease for the development or production of oil or gas will not preclude other permits or leases of the same land for the mining of other minerals, under this act, with suitable stipulations for such

joint operation, to the end that the full development of the mineral resources may be secured, nor will it necessarily preclude the allowance of applicable entries, locations, or selections of the lands included therein with a reservation of the mineral deposits to the United States.

4. Form and contents of application.—Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, be suspended for 30 days to enable preference-right claims to be presented before action, and after due notation then forwarded for his consideration, with a full report as to status and conflicts. No specific form of application is required, and no blanks will be furnished, but it should cover, in substance, the following points, and be under oath:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant, by affidavit of such fact, if native born; or if naturalized, by a certified copy of the certificate of naturalization on the form provided for use in public-land matters, unless such a copy is already on file; if a corporation, by certified copy of the articles of incorporation, and a showing as to the residence and citizenship of its stockholders; if a municipality a showing of (1) the law or charter and procedure taken by which it has become a legal body corporate; (2) that the taking of a permit or lease is authorized under such law or charter; and (3) that the action proposed has been duly authorized by the governing body of such municipality.

(*c*) [10]A statement that the applicant is not the holder of more than two other subsisting permits in the same State, nor of any permit in the same geologic structure, together with a statement of any other applications for permits in the same State, in which the applicant is directly or indirectly interested, fully disclosing the nature and extent of such interests. In this connection attention is directed to the limitations and exceptions of section 27 of the act.

(d) [11] Description of the land for which the permit is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify the land may be required before the permit is granted. In order to properly identify unsurveyed lands, great care should be taken, and if practicable the metes and bounds description should be connected by course and distance with some corner of the public land surveys.

(*e*) A statement that to the best of applicant's knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field.

(*f*) Three references as to applicant's reputation and business standing.

(*g*) If the applicant is claiming a preference right as explained in the next succeeding section of these regulations, he should set up fully the facts upon which such preference right is based, together with a true copy of the posted notice.

(*h*)[12] The applicant must furnish a bond, with qualified corporate surety, in the sum of $1,000, conditioned against the failure of the permittee to repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation. The penalty of the bond may be increased by the Secretary of the Interior when conditions warrant, particularly in relief cases. This bond may be filed with the application, which will expedite action thereon, or within 10 days after receipt of notice by the applicant that the permit will be granted when the bond is filed.

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[10] See amendments, pp. 935, 937, and 962.
[11] See amendment, p. 923.
[12] See amendment, p. 948 and supplemental instructions, p. 950.

Additional bonds, or a bond with additional obligations therein, will be required in special cases where a permit embraces reserved deposits in lands theretofore entered or patented with a reservation of the oil and gas to the United States, together with a right to prospect for, mine, and remove the same pursuant to the act of July 17, 1914 (38 Stat. 509), or where the lands constitute a portion of a reclamation project.

A revenue stamp must be attached to the bond at the rate of 1 cent on each $1 or fractional part thereof of premium paid.

The following form of bond is prescribed for use in ordinary cases in connection with applications for permit:

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

U. S. Land Office ______
Serial Number ______

Bond of oil and gas permittee

[Act of Feb. 25, 1920 (41 Stat. 437)]

Know all men by these presents, That we, ________ ______, of the county of ______, in the State of ______, as principal, and ______ ______ of the county of ______, in the State of ______, as surety, are held and firmly bound unto the United States of America in the sum of ______ dollars, lawful money of the United States to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, or successors, and assigns, jointly and severally by these presents.

Signed with our hands and sealed with our seals this ______ day of ______ in the year of our Lord one thousand nine hundred and ______.

The condition of the foregoing obligation is such that, whereas the said principal has made application under the act of February 25, 1920 (41 Stat. 437), for a permit to prospect for oil and gas for two years upon the following described lands _____________; and whereas said permit, if granted, will be on condition that all operations shall be conducted in accordance with approved methods; that all proper precautions shall be exercised to prevent waste of oil or gas developed in the lands, or the entrance of water through wells drilled by, or on behalf of, the principal to the oil sands or oil-bearing strata to the destruction of the oil deposits.

Now therefore, if said principal shall promptly repair any damage that may result to the oil strata or deposits resulting from improper methods of operation, or from failure to comply fully with the aforesaid conditions of said permit, then the above obligation is to be void and of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

Name and address of witness:

______ ______, ______ ______ [L. S.]
Principal.

__________________ ______ ______ [L. S.]
Surety.

____________,

____

In lieu of corporate surety, the applicant may deposit United States bonds of the par value of not less than $1,000, pursuant to section 1320 of the act of February 24, 1919 (see Treasury Circular No. 154, of June 30, 1919). When United States bonds are submitted as security in lieu of corporate surety same should be accompanied with a bond and power of sale duly executed by the applicant in substantially the following form:

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

U. S. Land Office ———
Serial No. ———

Bond of oil and gas permittee where United States bonds are accepted in lieu of surety or sureties, and power of attorney

[Act of Feb. 25, 1920 (41 Stat. 437)]

Know all men by these presents, That ______ of ______, State of ______, as obligor, is held and firmly bound unto the United States of America in the sum of $1,000, lawful money of the United States, to be paid to the United States, for which payment, well and truly to be made, binds himself, his heirs, executors, administrators, and assigns by these presents.

The condition of the foregoing obligation is such that whereas the said obligor has made application under the act of February 25, 1920 (41 Stat. 437), for a permit to prospect for oil and gas for two years upon the following-described land; __________; and

Whereas said permit, if granted, will be on condition that all operations shall be conducted in accordance with approved methods; that all proper precautions shall be exercised to prevent waste of oil or gas developed in the lands, or the entrance of water through wells drilled by or on behalf of the obligor to the oil sands or oil-bearing strata to the destruction of the oil deposits.

Now, therefore, if said obligor shall promptly repair any damage that may result to the oil strata or deposits resulting from improper methods of operation, or through failure to comply fully with the aforesaid conditions of said permit, then the above obligation is to be void and of no effect; otherwise to remain in full force and virtue.

The above-bounden obligor, in order the more fully to secure the United States in the payment of the aforesaid mentioned sum, hereby pledges as security therefor bonds of the United States in the principal sum of $1,000, which said bonds are numbered serially and are in the denominations and amounts and are otherwise more particularly described as follows:

______ bonds of $______ bearing ______ per cent interest with ______ coupons attached to each, numbered ______, which said bonds have this day been deposited with the Secretary of the Interior and his receipt taken therefor.

That the said obligor does hereby constitute and appoint the Secretary of the Interior as his attorney, for him and in his name to collect or to sell, assign and transfer the said United States bonds above described and deposited by the obligor as aforesaid, pursuant to authority conferred by section 1320, of the revenue act of 1918, approved February 24, 1919, as security for the faithful performance of any and all of the conditions or stipulations as hereinbefore set out, and it is agreed that, in case of any default in the performance of the conditions and stipulations of such undertaking the said attorney shall have full power to collect said bonds or any part thereof, or to sell, assign, and transfer said bonds or any part thereof without notice, at public or private sale, free from any equity of redemption or without appraisement or valuation, notice and right to redeem being waived, and to apply proceeds of such sale or collection in whole or in part to the satisfaction of any damages, or deficiencies arising by reason of such default, as said attorney may deem best. The interest accruing upon said United States bonds deposited as above stated, in the absence of any default in the performance of any of the conditions or stipulations of the bond, shall be paid to said obligor. The said obligor hereby for himself, his heirs, executors, administrators, and assigns ratifies and confirms whatever his said attorney shall do by virtue of these presents.

In witness whereof I have hereunto set my hand and seal this ______ day of ______ 19__.

______ ______. [L. S.].
Signature.

Before me, the undersigned, a notary public within and for the county of ______, in the State of ______, personally appeared ______ ______ and duly acknowledged the execution of the foregoing bond and power of attorney.

Witness my hand and notarial seal this ______ day of ______, 19__.

______ ______

[Notarial Seal.]

5. PREFERENCE RIGHT, HOW SECURED.—A preference right over others to a permit may be obtained, under section 13 of the act, by—

(*a*) Erecting upon the land desired, subsequent to the approval of the act, a monument not less than 4 feet high, at some conspicuous place thereon, of such a size as to be visible to anyone who may be interested. The monument may be of iron, stone, or durable wood, not less than 4 inches square or in diameter, and must be firmly embedded in the ground.

(*b*) Posting on or near said monument a notice stating that an application for permit will be made within 30 days after date of posting said notice, the notice to give the date and hour of posting, to be signed by the applicant, and give such a general description of the land to be covered by the permit, by reference to courses and distances from such monument and other natural objects and permanent monuments, as will reasonably identify the land. The area, approximately, must also be stated, and the notice must be so protected as to prevent its destruction by the elements. The preference right will exist for 30 days after the date of posting such notice, and if no application is filed within that time, the land will be subjected to any other application for permit or to other disposal.

(*c*) In cases of conflict between a preference right application and one filed without any claim of preference, the priority of the initiation of the claim will govern; for example, the filing of a proper application in the land office prior to the posting of notice by another, as aforesaid, will give a prior right.

6. FORM AND REQUIREMENTS OF PERMIT.—A permit will confer upon the recipient the exclusive right to prospect for oil or gas upon the lands embraced therein, provided he complies with the terms thereof, which permit will be, in form and substance, substantially as follows:

THE UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

General Land Office

U. S. Land Office ______
Serial Number ______

Know all men by these presents, That the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, has granted and does hereby grant a permit to ______ ______ granting ______ the exclusive right for ______ years from date hereof to prospect for oil or gas, but for no other purpose, the following described lands: ________, upon the express conditions following:

1. To mark each of the corners of the claim within 90 days from date hereof with substantial monuments so that the boundaries can be readily traced on the

ground, and post in a conspicuous place, upon the lands covered hereby, a notice that such a permit has been granted, and a description of the lands covered by this permit.

2. Within six months (two years in Alaska) from date hereof to install upon some portion of the lands a substantial and adequate drilling outfit and to commence actual drilling operations.

3. Within one year (three years in Alaska) from date hereof to drill one or more wells, not less than 6 inches in diameter to a depth of at least 500 feet each, unless valuable deposits of oil or gas shall be sooner discovered.

4. Within two years (four years in Alaska) from date hereof to drill one or more wells to a depth of at least 2,000 feet, unless valuable deposits of oil or gas shall be sooner discovered.

5. Not to drill any well within 200 feet of any of the outer boundaries of the lands covered by this permit unless the adjoining lands have been patented or the title thereto otherwise vested in private owners.

6. To carry on all operations hereunder in accordance with approved methods and practice; to use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by permittees to the oil sands or oil-bearing strata to the destruction or injury of the oil deposits, and to carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior relative to prevention of waste and preservation of property, and to comply with such regulations as may be issued by the Secretary of the Interior as to methods of operation.

7. To furnish and maintain during the period of this permit a bond with qualified corporate surety in the sum of $______, conditioned against the failure of the permittee to repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation.

8. That as to any lands covered by this permit embraced at the date hereof in any entry or patent with a reservation of the oil and gas deposits to the United States pursuant to the act of July 17, 1914 (38 Stat. 509), or the act of December 29, 1916 (39 Stat. 862), permittee shall reimburse such entrymen or patentee for all damage to crops and improvements caused by drilling or other prospecting operations.

9. That this permit is granted upon the express condition that the right is reserved to the Secretary of the Interior to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands covered thereby, as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in the act under which this permit is granted.

10. This permit is granted on the express condition that if any of the land covered thereby is embraced in a forest, reclamation, power, or other withdrawal, or is segregated for any particular purpose operations under this permit shall be so conducted as not to interfere with the administration and use of the land for the purpose for which withdrawn or segregated to a greater extent than may be determined by the Secretary of the Interior to be necessary for the most beneficial use of the land.

11. The granting of this permit shall not preclude the allowance of entry, location, or selection of any of the lands included therein, where such entry, selection, or location is made with a reservation of the mineral deposits to the United States.

12. That until this permittee shall apply for a lease of one-quarter or more of the area included herein, he shall pay to the United States 20 per cent of the gross value of all oil or gas secured by him from the lands and sold or otherwise disposed of, or held by him for sale or other disposition.

13. The Secretary of the Interior reserves the right and authority to cancel this instrument for failure of the permittee to comply with any of the conditions enumerated herein or to exercise due diligence in the work of development.

14. Valid rights existing at the date of this permit will not be affected thereby.

Dated this ______ day of ______, 19__.

______ ______,
Secretary of the Interior.

7.[13] EXTENSION OF LIFE OF PERMIT.—If for any good reason the permittee is unable, with the exercise of diligence, to test the land within two years, application for extension for not to exceed two years may be filed within the life of the permit, and must be accompanied by a showing under oath, corroborated, as to the causes that make such extension necessary, and as to what efforts have been made to comply with the condition of the permit; ordinarily no extension will be granted in the absence of the minimum amount of drilling required by the permit. This application should be addressed to the Secretary of the Interior, and be filed either in the district land office or in the General Land Office. This privilege is not applicable to Alaska.

8.[14] REWARD FOR DISCOVERY.—Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in the permit, within the period of the permit or extension thereof, the permittee is entitled (*a*) to a lease of one-fourth of the land included in the permit, on a royalty of 5 per cent, or for at least 160 acres if there be that area in the permit; (*b*) to a preference right to a lease for the remainder of the land covered by his permit at such royalty as may be fixed by the Secretary of the Interior, not less than 12½ per cent in amount or value of the production, nor more than the royalties fixed for leases under section 18 of the act (sec. 19, par. *c*, of these regulations), except that on that portion of the average production exceeding 200 barrels per day per well for the calendar month, the royalties shall be 33⅓ per cent for oil of 30° B. or over and 25 per cent for oil of less than 30° B.

9. PENALTY FOR DEFAULT.—The permit will be subject to cancellation by the Secretary of the Interior for failure of the permittee to comply with any of the conditions enumerated therein or to exercise due diligence in the work of development.

In the absence of discovery of oil or gas within the period of the permit or extension thereof, the permit will thereupon terminate and the lands or deposits will automatically revert to their original status, but the land will continue segregated pending action by the Land Department on any application for extension that is timely filed.

10. PERMITS IN ALASKA.—The foregoing rules and regulations generally will apply to permits in Alaska, under section 13 of the act, but with some modifications, viz:

(*a*) A person, association, or corporation is authorized to hold five permits at one time in said territory, but only one permit in the geologic structure of any one producing oil field; hence subdivision *c* of section 4 of these regulations should be modified accordingly in making application for permits for lands in Alaska under section 13 of the act.

(*b*) The preference right treated under section 5 of these regulations extends for a period of six months after the erection of monument and posting of notice provided for therein, and the period for marking of the corners is extended to one year after the granting of the permit.

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[13] See Circular No. 1147, p. 965.
[14] See amendment, p. 939, and added paragraph 8 (a), p. 916.

(*c*) The time for exploratory work in Alaska is four years, instead of two, and there is no provision for extension of such period. The various items necessary in this exploratory work are set forth in the form of permit herein provided, the Alaskan period being included in parentheses, after the period prescribed in the States.

11. PERMITS FOR RESERVED DEPOSITS.—The deposits of oil and gas in all lands for which a patent has issued with a reservation of the oil and gas to the United States, under the act of July 17, 1914 (38 Stat. 509), subject to the preference right, if any, explained in the next succeeding section hereof, may be included in a permit under the provisions of this act, conditioned upon the permittee filing with the Secretary of the Interior a satisfactory bond or undertaking as security for the payment of all damages to crops and improvements on such lands by reason of prospecting, as required by the said act. (See G. L. O. Circular No. 393, 44 L. D. 32.)

12. PREFERENCE RIGHT OF OWNER OF SURFACE.—Under section 20 of the act a preference right to a prospecting permit is given to an entryman or owner of land not claimed under any railroad grant, under the following conditions: (1) The entry must have been made prior to February 25, 1920; (2) the entry must have been bona fide under and pursuant to the act under which made; (3) the entry must have been made without a reservation of the oil and gas, for land unwithdrawn, not classified as oil and gas land, and not known to be valuable for its oil or gas deposits, at date of entry; (4) in case the entry is patented, it must have been with a reservation of the oil and gas to the Government; if the entry is not patented, the entryman must waive all right under the entry to the oil and gas in the land; (5) if the entry has been assigned or transferred, such assignment or transfer must have been prior to January 1, 1918.

(*a*) Should an application for permit for entered or patented lands with a reservation of the oil and gas content to the United States be filed by a person other than the entryman or owner of the land, the applicant will be required to serve personal notice of such application upon the owner or owners of the land so entered or patented, with a warning therein that if said owner desires to exercise his preference right, if any, to a permit, he must file within 30 days his application therefor in the proper local land office. The application must furnish evidence of the service of notice on the owner and evidence that the party served is the owner of the land involved, either by his affidavit, duly corroborated, or by certificate of the officer in whose office transfers of real property are to be recorded.

(*b*) The preference-right applicant must show that he is entitled under the section above outlined, together with his qualifications, to hold a permit as previously set forth in these regulations, and if such an application be filed, the Secretary of the Interior will award the permit to the party entitled thereto.

(*c*) If the land, either withdrawn or unwithdrawn, is covered by an unpatented nonmineral entry without a reservation of the oil and gas content to the Government, a prospecting permit may not be granted so long as the entry subsists without such reservation. In cases where applications for prospecting permits are filed by persons other than the entrymen for land in this status such applications will be referred to the United States Geological Survey for classification as to the prospective oil value of the land affected. If the Geological Survey shall conclude and report that the land embraced in such a nonmineral entry is without prospective oil or gas value, the application for permit will be rejected as to such land; but if the Geological Survey shall report that the land has a prospective oil or gas value and offers a favorable opportunity for prospecting operations, then the General Land Office will direct the proper local officers to serve notice on the nonmineral entryman to the effect that said land has been reported as valuable for its oil or gas content, and that the said entryman will be allowed 15 days within which (1) to file in the local office his consent to a reservation to the Government of the oil and gas content of the land embraced in his entry and in which to exercise his preference right, if any, to a prospecting permit for said land by filing a proper application therefor, or (2) to show cause, if any there be, why he should not consent to the mineral reservation, failing in either of which his entry will be canceled without further notice. The local office will thereupon report the action taken to the commissioner, whereupon (1) if the nonmineral entryman shall have failed to take any action, order of cancellation of the nonmineral entry will be made and action taken on the prospecting permit accordingly; (2) if consent to the reservation shall have been filed, a prospecting permit will be granted to the entryman or the former applicant, as the case may be, for the reserved mineral deposits; (3) if the nonmineral entryman shall submit a showing why the entry should not be impressed with a reservation of the mineral to the Government, such showing will be referred to the Geological Survey for consideration and report. If upon the receipt of such report the department shall conclude that the land is without mineral value, the application for prospecting permit will be rejected; but if the department shall conclude that, notwithstanding the showing made by the entryman, the land has a prospective oil and gas value, such action will be taken as the facts may warrant.

From the above it will be seen that it is desirable on the part of any applicant for a prospecting permit for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise desirable on the part of any nonmineral entryman who is contending that the land is nonmineral in character, to submit with their respective applications or showings as complete and accurate geological data as may be procurable, preferably the reports and opinions of qualified experts.

(*d*) In case of conflict between a preference-right claim under section 20 of the act and one claimed by virtue of section 18 or 19, the issue will be determined on the basis of priority.

(*e*) Claimants under this section of the act may combine their holdings for the purpose of making joint application for a permit, provided in the aggregate area does not exceed 2,560 acres and that all the lands for which application is made are within an area of 6 miles square or within the same township.

(*f*) The right of a permittee under a preference-right permit to a lease after discovery is governed by other provisions of the act, as set forth in section 8 of these regulations.

12½. Assignment of permits.—Permits, after being awarded, may be assigned to qualified persons or corporations upon first obtaining consent of the Secretary of the Interior. Mere rights to receive a permit are not assignable.

II. OIL AND GAS LEASES

13. Designation and offer of lands for lease.—Pursuant to the provisions of section 17 of the act, the unappropriated deposits of oil or gas situated within known geologic structures of producing oil or gas fields, and the lands containing same, will be divided into leasing blocks or tracts in areas not exceeding 640 acres each, and not exceeding in length two and one-half times their width, and offered for lease at a stated royalty by competitive bidding to the highest responsible bidder having the qualifications prescribed by section 15, paragraph (*a*) hereof.

14.[d] Notice of lease offer..—Notice of the offer of lands for lease will be given by publication in a newspaper of general circulation in the county in which the lands or deposits are situated for a period of 30 days; such notice will state the day and hour on which the offering will be made at public auction at the United States land office of the district in which the lands are situated, to the qualified bidder offering the highest bonus for the lease at the stated rental and royalty. Copy of the notice will be posted in said local office during the period of publication. This notice will be published at the expense of the Government. All bidders at any such auction are warned against violation of the provisions of section 59 of the United States Criminal Code, approved March 4, 1909, prohibiting unlawful combination or intimidation of bidders.

15. Auction of lease.—At the time fixed in the notice, the register or receiver will, by public auction, offer the land for lease on the terms and conditions as to payments of royalties and rents fixed in the notice, to the qualified bidder of the highest amount offered as a bonus for the privilege of leasing the land. The successful bidder must deposit with the receiver on the date of the sale, certified check on a solvent bank, or cash, for one-fifth of the amount bid by him, which payment the receiver will credit to "Trust funds—Unearned moneys." At the time of such payment the successful bidder will also file the requisite showing of his qualifications to receive a lease, which shall include the following:

(*a*) Proof of citizenship of applicant; by affidavit of such fact, if native born, or if naturalized, by certified copy of the certificate of naturalization, on the form provided for use in public-land matters, unless such copy is already on file; if a corporation, by certified copy of the articles of incorporation and a showing as to the residence and citizenship of its stockholders.

(*b*) The affidavit of the bidder or the affidavit of one of the officers of a corporate bidder that the bidder does not hold another lease in the geologic structure of the same producing oil or gas field, nor more than two leases, or a lease and a permit, in the State, except under sections 18, 18*a*, 19, and 22 of the act; and also that the acceptance of the lease by such successful bidder will not be in violation of the provisions of section 27 of the act relative to excess holdings by individuals or corporations.

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[d] See instructions of Oct. 19, 1929, p. 1149.

The register and receiver will thereupon transmit such showing, together with a report of the proceedings had at the auction, by special letter to the Commissioner of the General Land Office.

16. AWARD OF LEASE.—On receipt of the report of the auction from the register and receiver, the Secretary of the Interior will take action thereon, and either award the lease to the successful bidder or reject same, notice of which will be forthwith transmitted to the bidder through the local office. If the lease shall be awarded, the notice will be accompanied by copies of leases for execution by the lessee, who shall, within 30 days from receipt of such notice, execute said lease in triplicate, and pay to the receiver the balance of the bonus bid by him, together with the first year's rental, and also cause to be filed in the Land Office the bond required by section 2 (*a*) of the lease; in lieu of such bond, Liberty bonds will be taken at par in the amount of the bond, as provided in the act of February 24, 1919 (40 Stat. 1148). If the bid be rejected, the receiver will return by his official check the deposit made at the auction. In case of the award of a lease and failure on the part of the bidder to execute same, and otherwise comply with the applicable regulations, the deposit made will be considered forfeited and disposed of as other receipts under this act.

17. FORM OF LEASE.—The lease referred to in the preceding sections will be in form and substance substantially as follows:

U. S. Land Office ______
Serial No. ______

DEPARTMENT OF THE INTERIOR

Lease of oil and gas lands under the act of February 25, 1920

Date—Parties.—This indenture of lease entered into, in triplicate, this ______ day of ______ A. D., 19__, by and between the United States of America, acting in this behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and ______ of ______, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved February 25, 1920 (41 Stat. 437) entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter referred to as the act, which is made a part hereof, witnesseth:

SECTION 1. *Purposes.*—That the lessor in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the following described tracts of land situated in the county of ______, State of ______, and more particularly described as follows: ____________ containing ______ acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof, for a period of 20 years, with the preferential right in the lessee to renew this lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by the lessor, unless otherwise provided by law at the time of the expiration of such periods.

SEC. 2. In consideration of the foregoing, the lessee hereby agrees:

(*a*) *Bond.*—To furnish a bond with approved corporate surety in the penal sum of $5,000, conditioned upon compliance with the terms of the lease.

(*b*) *Commence drilling.*—The lessee agrees, within three months from delivery of executed lease, to proceed with reasonable diligence to install on the leased ground a standard or other efficient drilling outfit and equipment, and to commence drilling at least one well, and to continue such drilling with reasonable diligence to production, or to a point where the well is demonstrated unsuccessful, and thereafter to continue drilling with reasonable diligence at least one well at a time until the lessee shall have drilled wells equal in number to the number of 40-acre tracts embraced in the leased premises, unless the lessor shall, for any reason deemed sufficient, consent in writing to the drilling of a less number of wells; the lessee further agrees to drill all necessary wells fairly to offset the wells of others on adjoining land or deposits not the property of the United States.

(*c*) *Royalty and rents.*—To pay the lessor in advance, beginning with the date of the execution of this lease, a rental of $1 per acre per annum during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, and, in addition to such rental, a royalty of ---- per cent of the value of oil or gas produced from the land leased herein (except oil or gas used for production purposes on said lands or unavoidably lost), or, on demand of the lessor, ---- per cent of the oil or gas produced (except oil or gas used for production purposes on said lands, or unavoidably lost), in which case credit for rent shall be on the basis of the current field price of oil, the royalty, when paid in value, to be due and payable monthly on the 15th of each month following the month in which produced, to the receiver of public moneys of the proper land district; and when paid in kind, to be delivered in the field where produced at such times, and in such manner as may be required by the lessor; such royalties, whether in value or kind, shall be subject to reduction whenever the average daily production of any oil well shall not exceed 10 barrels per day, if in the judgment of the lessor the wells can not be successfully operated upon the royalties fixed herein.

(*d*) *Sales contract.*—To file with the Secretary of the Interior copies of all sales contracts for the disposition of oil and gas produced hereunder, except for production purposes on the land leased, and, in the event the United States shall elect to take its royalties in money instead of in oil or gas, not to sell or otherwise dispose of the products of the land leased, except in accordance with a sales contract or other method first approved by the Secretary of the Interior.

(*e*) *Monthly statement.*—To furnish monthly statements in detail in such form as may be prescribed by the lessor, showing the amount, quality, and value of all oil and gas produced and saved during the preceding calendar month as the basis for computing the royalty due the lessor. The leased premises, and all wells, improvements, machinery, and fixtures thereon or connected therewith, and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized officer of the department.

(*f*) *Plats and reports.*—To furnish annually and at such times as the Secretary shall require, in the manner and form prescribed by the Secretary of the Interior, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, accompanied by a report in detail as to the stockholders, investment, depreciation, and cost of operation, together with a statement as to the amount and grade of oil and gas produced and sold, and the amount received therefor, by operations hereunder.

(*g*) *Log of wells.*—To keep a log in the form prescribed by the Secretary of all the wells drilled by the lessee, showing the strata and character of the ground passed through by the drill, which log, or copy thereof, shall be furnished to said lessor on demand.

(*h*) *Diligence—Prevention of waste—Health and safety of workmen.*—To exercise reasonable diligence in drilling and operating wells for the oil and gas on the lands covered hereby while such products can be secured in paying quantities, unless consent to suspend operations temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner, in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely any well before abandoning the same so as to effectually shut off all water from the oil or gas bearing strata; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to conduct all mining, drilling, and related productive operations subject to the inspection of the lessor; to carry out at expense of the lessee all reasonable orders and requirements of lessor relative to prevention of waste and preservation of the property and the health and safety of workmen, and on failure so to do the lessor shall have the right to enter on the property to repair damage or prevent waste at lessee's cost; to abide by and conform to regulations in force at the time the lease is granted covering the matters referred to in this paragraph: *Provided*, That lessee shall not be held responsible for delays or casualties occasioned by causes beyond lessee's control.

(*i*) *Taxes and wages—Freedom of purchase.*—To pay when due all taxes lawfully assessed and levied under the laws of the State upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(*j*) *Reserved deposits.*—To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas.

(*k*) *Excess holdings.*—To observe faithfully the provisions of section 27 of the act defining the interest or interests that may be taken, held, or exercised under leases authorized by said act.

(*l*) *Assignment of lease.*—Not to assign this lease or any interest therein, nor sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior first had and obtained.

(*m*) *Deliver premises in case of forfeiture.*—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease.

Sec. 3. The lessor expressly reserves:

(*a*) *Rights reserved—Easements and rights of way.*—The right to permit for joint or several use such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in said act, and the treatment and shipment of products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes.

(*b*) *Disposition of surface.*—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereinafter enacted in so far as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(*c*) *Pipe lines to convey at reasonable rates.*—The right to require the lessee, his assignee, or beneficiary, if owner, or operator of, or owner of a controlling interest in any pipe line, or any company operating the same which may be operated accessible to the oil derived from lands under such lease, to accept and convey at reasonable rates and without discriminating the oil of the Government or of any citizen or company, not the owner of any pipe line, operating a lease or purchasing oil or gas under the provisions of this act.

(*d*) *Monopoly and fair prices.*—Full power and authority to carry out and enforce all the provisions of section 30 of the act, to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices to prevent monopoly and to safeguard the public welfare.

(*e*) *Helium.*—Pursuant to section 1 of the act, the lessor reserves the right to take all helium from any gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium, the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof; provided, that the lessee shall not, as a result of the operation in this section provided for, suffer a diminution in value of the gas from which the helium has been extracted, or loss otherwise, for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

Sec. 4 *Surrender and termination of lease.*—The lessee may, on consent of the Secretary of the Interior first had and obtained in writing, surrender and terminate this lease upon the payment of all rents, royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Sec. 5. *Purchase of materials, etc., on termination of lease.*—Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within six months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee and in use thereon as a necessary or useful part of an operating or producing plant on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not within six months elect to purchase all or any part of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time within 90 days to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells.

Sec. 6. *Judicial proceedings in case of default.*—If the lessee shall fail to comply with the provisions of the act or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at the date hereof, and such default shall continue after service of written notice thereof by the lessor, then the lessor may institute appropriate judicial proceedings for the forfeiture and cancellation of this lease in accordance with the provisions of section 31 of said act; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 7. *Heirs and successors in interest.*—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon and every benefit hereof shall inure to the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 8. *Unlawful interest.*—It is also further agreed that no Member of or Delegate to Congress or Resident Commissioner after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts enter into and form a part of this lease so far as the same may be applicable.

In witness whereof

THE UNITED STATES OF AMERICA.
By ______ ______ [L. S.]

Witness: ______ ______
______ ______ ______ ______ [L. S.]
______ ______ ______ ______ [L. S.]
______ ______ ______ ______ [L. S.]

Bond required under paragraph 2a of the lease should be in substantially the following form:

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

U. S. Land Office ______
Serial Number ______

Bond of oil and gas lessee

[Act of Feb. 25, 1920 (41 Stat. 437)]

Know all men by these presents, That we, ______ ______, of the county of ______, in the State of ______, as principal, and ______ of the county of ______, ______, in the State of ______, as surety, are held and firmly bound unto the United States of America in the sum of ______ dollars, lawful money of the United States, for the use and benefit of the United States and of any entryman or patentee of any portion of the land covered by the hereinafter described lease heretofore entered or patented with a reservation of the oil and gas deposits to the United States, to be paid to the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

Signed with our hands and sealed with our seals this ______ day of ______, in the year of our Lord one thousand nine hundred and ______.

The condition of the foregoing obligation is such that—

Whereas the said principal, by instrument dated ______, has been granted the exclusive right to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the following described lands ______________ under and pursuant to the provisions of the act approved February 25, 1920 (41 Stat. 437); and

Whereas the said principal has by such instrument entered into certain covenants and agreements set forth therein, under which operations are to be conducted:

Now, therefore, if said principal shall faithfully comply with all the provisions of the above described lease, then the above obligation is to be void and of no effect, otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

Name and address of witness:

________ ________ ________ ________ [L. S.]
Principal.
____

________ ________ ________ ________ [L. S.]
Surety.
____

Where Government bonds are deposited as security in lieu of a surety bond, in compliance with paragraph 2 (*a*) of the lease form, same should be accompanied with a combined bond and power of attorney to sell, duly executed by the lessee, along the same general lines as the form set out in paragraph 4 (*h*) of these regulations with suitable changes made in the condition of the bond to correspond with the condition in the lease bond, form for which is above set out.

III. RELIEF MEASURES

Sections 18, 19, and 22 of the act provide for the "relief," so called, of certain defined claimants of oil and gas lands, who at date of the act had not perfected their claims under the preexisting mining laws, and are prevented from doing so by withdrawal of the land or by this act.

18. CONDITIONS FOR RELIEF UNDER SECTION 18:

(*a*) That the land claimed must have been included in the Executive order of withdrawal of September 27, 1909, and must have remained so withdrawn.

(*b*) That the claim must have been initiated under the placer mining laws prior to July 3, 1910, and claimed and possessed continuously from that time.

(*c*) That no claimant who has acquired any interest in the land since September 1, 1919, from another claimant who, on that date or since that time, was, or is claiming or holding, more than the maximum allowed a claimant under section 18 of the act, may secure a lease under section 18, or any interest therein. This limitation does not, however, apply to an exchange of an interest in such lands made prior to January 1, 1920, which did not increase or reduce the area or acreage held or claimed, in excess of the maximum by either party to the exchange.

(*d*) That claimant or predecessors must have drilled an oil or gas well on the land to discovery.

(*e*) That all conflicting claims asserted prior to July 1, 1919, must have been disposed of, as provided in section 28 hereof or otherwise.

(*f*) That no claimant who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

(*g*) That claimant must, on or before August 25, 1920, file a relinquishment to the United States of all right, title, and interest in and to the land, together with an application for a lease. This relinquishment may be in the form of an unconditional quitclaim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

(*h*)[15] That claimant must pay for one-eighth of the value at the time of production of all oil and gas produced prior to date of filing relinquishment and application for relief, exclusive of oil and gas used on the land for production purposes, or unavoidably lost.

19. RELIEF THAT MAY BE GRANTED UNDER SECTION 18:

(*a*) *Lands not in naval petroleum reserves.*—A qualified claimant, upon complying with the provisions of the act and these regulations, will be entitled to a 20-year lease from the United States, commencing and effective as of the date of filing relinquishment and application for relief, substantially in the form prescribed in section 17 hereof, at a royalty to be fixed by the Secretary of the Interior, but not less than 12½ per cent of all oil and gas produced exclusive of that used for production purposes on the claim, or unavoidably lost. There is, however, a limitation placed by the act upon the acreage that may be included in such lease. If the geologic oil or gas structure of the producing field in which the claim is situated does not exceed 640 acres in area the lease may include the entire area if covered by the claim; but if the area of such structure exceeds 640 acres the act provides that not more than one-half of the area, same to be selected by the claimant but in no case to exceed 3,200 acres, may be leased to any one claimant.

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[15] See Circular No. 733, p. 126.

(*b*) *Lands in naval petroleum reserves.*—If the land claimed is within a naval petroleum reserve the claimant will be entitled to lease only the producing wells on the claim, together with an area of land sufficient for the operation of such wells, upon a royalty to be fixed by the Secretary of the Interior, but not less than 12½ per cent of the production, except that used for production purposes on the claim or unavoidably lost. The act forbids the drilling of any wells in lands subject to this provision within 660 feet of the leased wells without the consent of the lessee. It further provides that the President may, in his discretion, lease the remainder or any part of the claim on which such wells have been drilled, and in the event of such leasing the claimant shall have a preference to such lease. The President may also permit the lessee of any well to drill additional wells within the limited area of 660 feet upon such terms and conditions as he may prescribe. These terms and conditions can not be prescribed here, but will be determined on the merits in each separate case.

(*c*) *Royalties.*—The royalties payable under leases granted pursuant to section 18 of the act are cumulative, and are hereby determined and prescribed as follows:

For all oil produced of 30° B. or over upon each claim on which the wells average not exceeding 20 barrels per day per well for the calendar month, 12½ per cent; upon each claim on which the wells average more than 20 barrels and not more than 50 barrels per day per well for the calendar month, 16⅔ per cent; upon each claim on which the wells average more than 50 barrels and not more than 100 barrels per day per well for the calendar month, 20 per cent; upon each claim on which the wells average more than 100 barrels per day per well for the calendar month, 25 per cent.

For all oil produced of less than 30° B. upon each claim on which the wells average not exceeding 20 barrels per day per well for the calendar month, 12½ per cent; upon each claim on which the wells average more than 20 barrels and not more than 50 barrels per day per well for the calendar month, 14²⁄₇ per cent; upon each claim on which the wells average more than 50 barrels and not more than 100 barrels per day per well for the calendar month, 16⅔ per cent; upon each claim on which the wells average more than 100 barrels per day per well for the calendar month, 20 per cent.

Only wells which have a commercial production during at least a part of the month shall be considered in ascertaining the average production herein, and the Secretary of the Interior shall determine what are commercially productive wells under this provision.

The royalties on gas produced, if any, will be fixed and determined in each lease.

20. CONDITIONS FOR RELIEF UNDER SECTION 19:

A. *For permit.*—(*a*) That the land must not be in a naval petroleum reserve.

(*b*) The applicant or his predecessor in interest must have been an occupant or claimant of the land on or before October 1, 1919, under a claim initiated under the placer mining laws, when the land was not withdrawn, provided that a transferee of such a claim subsequent to October 1, 1919, will not be permitted to hold permits under section 19 of the act to exceed 2,560 acres in the same geologic structure nor for more than three times that area in the same State.

(*c*) That claimant, by himself or predecessor in interest, must have performed all acts under the preexisting laws necessary to valid locations, except to make discovery.

(*d*) That prior to February 25, 1920, claimant must have performed work or expended on or for the benefit of such locations an amount equal in the aggregate to $250 for each location.

(*e*) That no claimant who has been guilty of any fraud or who had knowledge, or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

(*f*) That claimant must, on or before August 25, 1920, file a relinquishment to the United States of all right, title, and interest in and to the land, together with an application for a permit. This relinquishment may be in the form of an unconditional quit-claim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

B. *For lease.*—The conditions necessary to obtaining a lease under section 19 of the act are identical with those outlined in paragraphs (*a*), (*b*), (*e*), and (*f*), for permits, together with the following additional conditions:

(*a*) That claimant must have made a discovery of oil or gas on or before February 25, 1920.

(*b*) That claimant must not be entitled to relief on the land in question under section 18 of the act.

(*c*)[16] That claimant must pay for one-eighth of the past production up to date of filing application for relief, exclusive of that used on the land for production purposes or unavoidably lost.

21. RELIEF THAT MAY BE GRANTED UNDER SECTION 19:

(*a*) A claimant qualified under the above conditions relating to permits, upon complying with the provisions of the act and these regulations, will be entitled to a prospecting permit upon the same terms, conditions, and limitations as to acreage, as other permits provided for in the act, substantially in form prescribed in section 6 hereof.

(*b*) A claimant qualified under the above conditions relating to leases is entitled to a 20-year lease from the United States, effective from date of filing application for relief, substantially in the form prescribed in section 17 hereof, the royalty to be fixed by the Secretary of the Interior, but such royalty may not be less than 12½ per cent of all oil and gas produced exclusive of that used for production purposes on the land or unavoidably lost. In the event the land is in the geologic structure of proven territory at the time of granting the permit under this section, the royalty required under the lease based thereon shall not be less than 12½ per cent, but if at the time the permit is granted the land is not in proven territory the amount of royalty will be governed by the general terms of the act as set out in section 14 thereof.

22. ALASKA CLAIMS—CONDITIONS FOR RELIEF UNDER SECTION 22:

A. *For permit.*—(*a*) That claimant must have been an occupant or claimant of the land on February 25, 1920, under a claim initiated under the placer mining laws by claimant or predecessors prior to November 3, 1910, the date of the Executive order withdrawing all public lands in Alaska containing petroleum deposits, including those in national forests.

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[16] See Circular No. 733, p. 126.

(*b*) That claimant must have performed all acts prior to November 3, 1910, under the then existing laws necessary to valid locations except to make discovery.

(*c*) That claimant, (1) prior to November 3, 1910, must have made substantial improvements for the discovery of oil or gas on or for each location, or (2) prior to February 25, 1920, expended not less than $250 in improvements on or for the benefit of each location.

(*d*) That claimant must on or before February 25, 1921, or within six months after final denial or withdrawal of application for patent, file a relinquishment to the United States of all right, title, and interest in and to the land. This relinquishment must be in the form of an unconditional quitclaim deed, duly executed and acknowledged, but not recorded, and when filed will be held for such action as the facts and the law in the case warrant and require.

In addition to the above, the conditions outlined in paragraph (*e*) of section 20 hereof are applicable to relief in Alaska.

B. *For lease.*—The conditions necessary to obtaining a lease under section 22 of the act are identical with those outlined in the paragraphs relating to permits in Alaska, together with the following additional conditions:

(*a*) That claimant or predecessors must have drilled an oil or gas well on the land to discovery.

(*b*) That claimant must pay for one-eighth of the past production exclusive of that used on the land for production purposes or unavoidably lost.

23. ALASKA CLAIMS—RELIEF THAT MAY BE GRANTED UNDER SECTION 22:

(*a*) A claimant qualified under the above conditions relating to permits, upon complying with the conditions of the act and these regulations, will be entitled to prospecting permits under the same terms and conditions as other permits in Alaska provided for in section 13 of the act, substantially in the form prescribed in section 6 hereof.

(*b*) A claimant qualified under the above conditions relating to leases is entitled to a lease substantially in the form prescribed in section 17 hereof, the rental and royalty to be fixed by the Secretary of the Interior and specified in the lease, subject to readjustment at the end of each 20-year period of the lease.

(*c*) Only five permits or leases in the aggregate may be held at any one time by any claimant, and not more than 1,280 acres may be included in one permit under section 22 of the act.

23½. ROYALTIES AND RENTALS ON OIL AND GAS LEASES IN ALASKA.—The royalties and rentals payable under oil and gas leases granted in Alaska pursuant to sections 14 and 22 of the act of February 25, 1920 (41 Stat. 437), are hereby determined and prescribed as follows:

(*a*) For leases granted under section 22 of the act, the royalty shall be: (1) For the first five years from and after the date of the lease, no royalty, except in the case of leases whereon the producing wells yield an average of 100 barrels or more per well per day for the calendar month, in which event the royalty shall be 5 per cent of all oil produced; (2) for the second period of five years from and after the date of each lease under section 22 of the act the royalty upon all leases shall be 5 per cent; (3) for the succeeding 10 years the royalty upon all leases under section 22 of the act shall be 10 per cent of all oil produced.

(*b*) Upon leases granted in Alaska under section 14 of the act, the permittee who discovers oil will be entitled to a lease for one-fourth of the area of the permit without payment of royalty for the first five years succeeding the date of the lease and thereafter shall pay a royalty of 5 per cent upon all oil produced. On the remaining lands included within the area of the permit, the permittee will be given a preference right to a lease without payment of royalty for the first five years succeeding the date of the lease, except in the case of leases whereon the producing wells yield an average of 100 barrels or more per well per day for the calendar month, in which event the royalty shall be 5 per cent; for the second five years, the lessee will be required to pay a royalty of 5 per cent upon all oil produced, and for the succeeding 10 years, a royalty of 10 per cent upon all oil produced.

(*c*) No royalty will be charged in any case upon leases wherein the wells upon the lands average less than 10 barrels per well per day for the calendar month.

(*d*) No rental upon any oil or gas lease in Alaska will be charged during the first five years succeeding the date of the lease. After the expiration of the first five years succeeding the date of the lease, a rental of 10 cents per acre per annum will be charged on all leases, payable in advance: *Provided*, That the rentals so paid for any one year shall be credited upon the royalties accruing for that year.

(*e*) The royalties on gas produced, if any, will be fixed and determined in each lease.

24. BENEFICIARIES UNDER LEASES OR PERMITS.—All leases or permits under sections 18, 19, and 22 shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject to the same limitations as to area and acreage as is provided for claimant, but such persons will not necessarily be made parties to Government leases, and may assert their rights in the courts. Disputes of this character are not to be confused with adverse claims based upon independent title, hereinafter referred to. (See sec. 28 hereof.)

24½. WHO MAY APPLY.—All proper parties to a claim for relief under section 18, 19, or 22 of the act should join in the application, but, if for any sufficient reason that is impracticable, any person claiming a fractional or undivided interest in such claim may make application for a lease or permit, stating the nature and extent of his interest, and the reasons for nonjoinder of his coowner or coowners. In cases where two or more applications are made for the same claim or part of a claim, leases or permits will be granted to one or more of the claimants, as the law and facts shall warrant and as shall be deemed just.

25. FORM AND CONTENTS OF APPLICATION.—No set forms of application for a lease under section 18, 19, or 22, or a permit under section 19 or 22 of the act can be prescribed because the facts and cir-

cumstances pertaining to claims for relief are so varied. Applications for such leases or permits must be made under oath and the supporting documents and papers certified or under oath so far as practicable. The application, with all the accompanying papers, should be filed in the United States land office of the district in which the land is situated. Applications and supporting papers need not be executed in duplicate, but one complete copy of each application and supporting papers (except abstract of title) should be filed with the application, which copy will be transmitted by the register and receiver to the Chief of Field Division and notation to that effect made on the original. The application should contain full information as to the facts upon which the applicant relies for relief, covering the following points and such additional matters as may, from the peculiar facts in the case, be material in the establishment of his claim under the law:

(*a*) Date of application for lease or permit.

(*b*) Applicant's name, post-office address and citizenship.

(*c*) *Description of land.*—The land for which the application is made must be described by legal subdivisions of section, township, and range, if surveyed; if not surveyed, then by metes and bounds and courses and distances from some permanent monument. If the application is for a lease of unsurveyed land, the applicant, after he has been awarded the right to a lease, but before issuance thereof, will be required to deposit with the United States surveyor general of the State in which the land is situated the estimated cost of making a survey of the land, the balance, if any, after the survey is completed to be returned.

(*d*) *Origin and basis of applicant's claim for relief.*—The applicant must bring his claim clearly within all the requirements of the act as specifically pointed out in sections 18, 20, and 22 of these regulations. Every application must be supported by a duly certified abstract of title to the land brought up to the date of filing the application. In the event an abstract of title is already on file in the Land Department, a supplemental abstract extending over the period or periods not covered by the former may be furnished, and if furnished will be considered in connection with the abstract already on file. If any fraud has been committed in connection therewith, then a full affirmative showing must be made by the applicant to the effect that he has not been a party to such fraud, and that he has not been guilty of any fraud or had knowledge of fraud or reasonable grounds to know of any fraud in connection with his claim. If an application for patent has been filed, a brief résumé of the actions taken thereon should be stated. If the land is or has been involved in litigation in the courts to which the United States is a party, the status or result of such litigation should be furnished.

(*e*) *Particulars as to conflicting claims or interests.*—All conflicting or disputed claims, if any, to the land or production therefrom, specifying the character and extent of such interests, must be shown.

(*f*) *Discovery.*—Before a lease may be awarded under the relief sections of the act it must be satisfactorily shown that the applicant or his predecessors have drilled a well to a substantial and certain discovery of oil or gas in a producing stratum on the land covered by the location under which the applicant is asserting his claim.

(*g*) *Wells, improvements, and production.*—With each application for a lease under section 18, 19, or 22 of the act there must be filed a complete and detailed statement showing the number, depth, condition, and present daily production of all wells drilled on the land by the applicant and his predecessors in interest, and the nature and extent of all other improvements placed thereon by them.

With each application for a permit under section 19 or 22 of the act, a description of the work performed and improvements made upon or for the benefit of the location by the applicant and his predecessors must be filed, together with an itemized statement of the cost thereof. If the application is made under section 22, the date the work was performed or the improvements made must also be shown.

In either case applicant must show the position of all wells and improvements by courses and distances from the nearest corner of the public land survey, if the land is surveyed; if not surveyed, then from a corner of the claim. This may be shown by means of a diagram.

(*h*) *Amount and value of past production.*—Claimant must furnish a complete detailed statement, by months, of all past production from the land, up to the date of filing the application and relinquishment, showing (1) the grade and total quantity of oil and gas produced; (2) the amount sold or otherwise disposed of, to whom sold, and the selling price or other consideration received therefor; (3) a statement of the grade and amount of any and all such production held in storage, when produced, and the value at time of production; and (4) the amount consumed for production purposes on the land, or unavoidably lost.

Copies of any and all contracts under which oil or gas produced from the land has been or is being sold or otherwise disposed of must be furnished.

(*i*) *Inspection of records.*—The agreement on the part of the applicant to permit the inspection of any and all books, records, and accounts having any bearing on the data or information required by the application and to furnish copies or abstracts of such books, records, or accounts, on demand.

(*j*) *Interest in other leases and permits.*—The applicant will also furnish a complete statement of all lands for which he has filed application for lease or permit under sections 18, 19, and 22 of the act, and of such lands as are included in other applications in which he has any direct or indirect interest, together with a full disclosure of such interest by stock ownership or otherwise. If the applicant is a corporation, a certified copy of its articles of incorporation must be furnished, and a full disclosure made of the ownership of its stock, whether such stock is owned, held, or controlled directly or indirectly by any other person or corporation, who or which is an applicant for or a holder of a lease under said sections, and, in the event of such ownership, a description of the legal subdivisions of all the lands affected thereby is required. Lists of stockholders need not necessarily be filed in the local land offices, but may be filed directly with the Commissioner of the General Land Office, where they will be kept confidential except for Government purposes. In the event the lands so affected are not surveyed they may be described by the usual method of courses and distances and acreage.

(*k*) *Limitation of area.*—Applications for lease under section 18 of the act should disclose all other applications in which the applicant is directly or indirectly interested, for lease under said section for lands (describing same) in the same geologic structure; and applications under section 22 of the act should show all other applications for leases or permits under said section. The boundaries of the geologic structures of the various producing fields will be determined and announced by the United States Geological Survey under supervision of the Secretary of the Interior, and such information will be placed on file in all United States land offices.

(*l*) *Interests of beneficiaries.*—In applications for lease the nature and extent of the interests of all beneficiaries thereof by virtue of operating contracts or otherwise, not covered by paragraph 25 (*j*), must be disclosed, together with a full showing of all their interests in other leases or applications for leases under this act. If the beneficiary is a corporation or joint-stock company, a full disclosure must be made of the ownership of its stock and the residence and citizenship of its stockholders.

26. Payment of royalty on past production.—The application must be accompanied by a certified check in the amount of one-eighth of the gross value of all oil and gas produced and sold or held in storage, as per the statement required in paragraph 25 (*h*). All such sums will be held by the receiver in his account of "Trust funds—Unearned moneys" to await instructions as to their disposition. In lieu of the certified check herein required, the applicant may be permitted to deposit a bond by approved surety company in an amount not less than one-eighth of the estimated gross value of all oil and gas produced and sold or held in storage, securing the payment to the United States within 30 days from the award of the lease of the cash value of the past production due the United States under this act. In cases where the proceeds, or part thereof, of such past production have been deposited in escrow, pursuant to operating agreements under the act of August 25, 1914 (38 Stat. 708), or where in suits brought by the Government affecting such lands the proceeds of production, or part thereof, have been impounded in the custody of receivers, a formal tender may be made of the funds so held in escrow or impounded to the extent available or in the amount necessary, as the case may be, in lieu of such cash payment. In such cases the interest accumulating on such escrowed or impounded moneys after the tender is made will go to the Government.

Liberty bonds will be accepted at original cost in payment of royalty on past production in such proportion as the escrowed or impounded moneys have been invested therein.

Operating contracts made under the provisions of the act of August 25, 1914, supra, and in operation at the time of such tender, will not be terminated until the entire transaction of granting a lease and payment of royalty on past production shall have been consummated; nor will the Department of Justice be requested to dismiss any suits involving the land affected until the application for a lease has been adjudicated and approved; whereupon, after the suit has been dismissed and the impounded money tendered paid over to the Government, the lease will be executed and delivered.

27. Publication of notice.—Immediately upon the filing of an application for a lease or permit under section 18, 19, or 22 of the

act, the register and receiver will cause to be published, at the expense of the applicant, in a newspaper designated by the register, published in the vicinity of the land and most likely to give notice to the general public, a notice of the said application in substantially the following form:

DEPARTMENT OF THE INTERIOR

UNITED STATES LAND OFFICE

______ ______,
______ __, 19__.

Notice is hereby given that ______ ______, of ______, has appied for an oil and gas ______ under section ______ of the act of February 25, 1920 (41 Stat. 437), for ______ section ______, township ______ of range ______, ______ meridian, ______ county, State of ______. Any and all persons having adverse or conflicting claims to said land are hereby notified that a full statement, under oath, of such claim should be filed in this office showing a superior right to a permit or lease under said act or a valid existing adverse or conflicting claim to the land or the minerals therein under the public-land laws, on or before ______; otherwise such claim may be disregarded in granting the permit or lease applied for.

______ ______,
Register.

The register and receiver will fix a date in the notice on or before which adverse or conflicting claims may be asserted, which date should be not less than 30 nor more than 40 days after the date of first publication of the notice.

Such notice will be published in the regular issue and not in any supplement of the newspaper, once each week for a period of five consecutive weeks if in a weekly paper, or if in a daily paper for a period of 30 days.[e] The register and receiver will post a copy of said notice in a conspicuous place in their office during the period of publication.

Upon the applicant's furnishing satisfactory proof of such publication, but not earlier than the day following that set in the published notice on or before which adverse or conflicting claims were to be filed, the register and receiver will transmit by special letter all papers in the case, including any adverse or conflicting claims that may have been filed, together with proof of posting said notice in their office, to the Commissioner of the General Land Office.

28. ADVERSE OR CONFLICTING CLAIMS—PROCEDURE.—In case of adverse or conflicting claims for leases under section 18, 19, or 22, or permits under section 19 or 22, the Secretary of the Interior is clothed with authority to grant leases or permits, as the case may be, to one or more of them, as shall be deemed just.

(*a*) To have their claims considered in connection with the awarding of leases or permits it will be necessary for adverse claimants to make full showing (1) of a superior right to a lease or permit under this act, or (2) a superior right under some other public-land law. If the former, the conflicting claimant must make out a complete case in his own behalf as required by these regulations on or before August 25, 1920.

(*b*) Upon receipt of the application and showing of an adverse claimant the Commissioner of the General Land Office will consider same. If, in his judgment, the adverse claimant has failed to make a prima facie case showing that he is entitled to a lease or permit, as the case may be, for at least part of the land, his application will be rejected, subject to appeal to the Secretary of the Interior. But if the adverse claimant makes out a prima facie case the commissioner will take such course as may be advisable under the circumstances of each particular case to settle and adjust the rights of the respective parties, and may, if deemed necessary, order a formal hearing to settle disputed questions of fact. In the absence of appeal to the Secretary of the Interior from the final order or decision of the commissioner same shall be conclusive.

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[e] See instructions of Oct. 19, 1929, p. 1149.

29. COMPROMISES UNDER SECTION 18A.—No special procedure will be outlined under this section. Any request for a compromise or settlement under this section which may be filed in the Land Department will be transmitted to the President with such report as may be deemed advisable under the circumstances of the particular case. In case the land is in a naval petroleum reserve the Navy Department will be consulted before making such report.

IV. RIGHTS OF WAY FOR PIPE LINES

30. Section 28 of the act grants to any applicant having the qualifications outlined in section 1 of these regulations rights of way through public lands of the United States, including national forests, for pipe-line purposes for the transportation of oil or natural gas, on condition that the pipe lines for which rights of way are granted shall be operated and maintained as common carriers. The grant carries with it the right to the use of the ground actually occupied by the pipe line, and 25 feet on each side thereof for the purpose of construction, maintenance, and operation of the pipe line. Applicants for rights of way under this act will be governed by the regulations set forth in circular of June 6, 1908, (36 L. D. 567), in so far as applicable, appropriate changes being made in the forms therein prescribed to make them applicable to right-of-way cases arising under the act of February 25, 1920 (41 Stat. 437), for pipe lines to be constructed, maintained, and operated as common carriers. Failure on the part of grantee to fulfill the conditions imposed by the act shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is situated.

V. FEES AND COMMISSIONS [f]

31. Under the authority of section 38 of the act, the following fees and commissions are prescribed for transactions under the act:

(*a*) For receiving and acting on each application for a permit, lease, or other right filed in the district land office in accordance with these regulations, there shall be paid a fee of $2 for each 160 acres, or fraction thereof, in such application, but such fee in no case to be less than $10, the same to be paid by the applicant and considered as earned when paid, and to be credited in equal parts on the compensation of the register and receiver within the limitations provided by law.

(*b*) A commission of 1 per cent on all moneys received in each receiver's office, to be equally divided between the register and receiver; such commission will not be collected from the applicant, lessee, or permittee in addition to the moneys otherwise provided to be paid.

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[f] See Circulars Nos. 1004, p. 931, 1115, p. 949, and 1158, p. 968.

It should be understood that the commission here provided for will not affect the disposition of the proceeds arising from operations under the act as provided in section 35 thereof; also that such commission will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

VI. REPEALING AND SAVING CLAUSES

32. Section 37 of the act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas, referred to and described therein, may be disposed of only in the manner provided in the act "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

Stated negatively under this section of the act the following classes of oil or gas placer locations, so called, notwithstanding absence of fraud and full compliance with law in other respects, may not proceed to patent, viz:

(*a*) Any location made after withdrawal of the land.

(*b*) Any location made before withdrawal of the land, but not perfected by discovery at date of withdrawal, which does not come within the protective proviso of section 2 of the act of June 25, 1910 (36 Stat. 847); that is to say, any claimant who, at date of withdrawal, was not a bona fide occupant or claimant in diligent prosecution of work leading to discovery of oil or gas, and who has not continued in such diligent prosecution to discovery.

(*c*) Any location on lands not withdrawn, on which, at the date of the act, the claimant had not made discovery or was not in diligent prosecution of work leading to discovery, and does not continue such work with diligence to discovery.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

JOHN BARTON PAYNE, *Secretary.*

(Act omitted.)

APPENDIX

DIGEST OF DECISIONS AND OPINIONS IN CONNECTION WITH THE ADMINISTRATION OF THE ACT OF FEBRUARY 25, 1920, AS APPLIED TO OIL AND GAS.[g]

Permits for lands in Government reclamation projects.—In the case of permits issued for lands within reclamation withdrawals the following additional conditions will be included in the permit:

7. (*b*) To reimburse damage sustained by any reclamation homestead entryman pursuant to the requirements of paragraph 8 hereof: (*c*) To pay any

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[g] This digest of decisions and opinions is reproduced from digest printed as the appendix to Circular No. 672 dated Mar. 11, 1920 and revised to Oct. 29, 1920. The instructions must be construed in the light of subsequent amendatory decisions and opinions. See footnote, p. 868.

damage caused to any reclamation project or the water supply thereof by failure to comply fully with the requirements of paragraph 9 hereof.

8. That as to any lands covered by this permit which are also embraced in any reclamation homestead entry with a reservation of the oil and gas to the United States, permittee shall reimburse the entryman for all damage to crops or improvements caused by such drilling or other operations, such damage to include reimbursement of the entryman by the permittee of all reclamation charges for construction, operation, and maintenance for the portion of the land used and occupied by the permittee during the period of such use and occupation.

9. That as to any lands covered by this permit within the area of any Government reclamation project or in proximity thereto the permittee shall erect such dikes and embankments or take such other precautions as may be necessary, as required by the project manager, effectively to impound any flow of refuse oil, salt water, or oil from wells drilled, to prevent any injury to lands susceptible of irrigation under such project or injury to the water supply thereof.

In such case the following form of bond will be required:

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

U. S. Land Office ______
Serial number ______

Bond of oil and gas permittee

[Act of February 25, 1920 (41 Stat. 437)]

Know all men by these presents, That ______ ______ of ______ State of ______ as principal, and ______ ______ of ______ State of ______, as surety, are held and firmly bound unto the United States of America, for the use and benefit of the United States and of any reclamation homestead entryman on any of the hereinafter described lands embraced in that certain prospecting permit hereinafter referred to, in the sum of $5,000, lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, and each of us and each of our heirs, executors, administrators, successors, and assigns jointly and severally by these presents.

Signed with our hands and sealed with our seals this ______ day of ______, 19__.

The condition of the foregoing obligation is such that, whereas the said principal has been granted under the act of February 25, 1920 (41 Stat. 437), a permit (Serial No. ____) to prospect for oil and gas for two years, upon the following described lands: ____ on condition that the permittee shall (*a*) repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation; (*b*) reimburse any homestead entryman of land covered by said permit for all damage to crops and improvements caused by drilling or other operation by the permittee, such damage to include reimbursement of the entryman by the permittee of all reclamation charges for construction, operation and maintenance for the portion of the land used and occupied by the permittee during the period of such use and occupation by the permittee; and (*c*) erect such dikes and embankments or take such other precautions as may be necessary, as required by the project manager, effectively to impound any flow of refuse oil, salt water, or oil from wells drilled, to prevent any injury to lands susceptible of irrigation under any government irrigation project or injury to the water supply thereof.

Now, therefore, if said principal shall promptly and in all respects comply with said conditions, then the above obligation shall be void and of no effect; otherwise and in default of full and complete compliance therewith the said obligations shall remain in full force and effect.

Signed, sealed and delivered in the presence of:

(Name and address of witnesses)

______ ______ ______ ______ [L. S.]
Principal
______ ______

______ ______ ______ ______ [L. S.]
Surety
______ ______

Permits for deposits reserved under act of July 17, 1914 (38 Stat. 509).—In the case of permits issued for deposits of oil or gas reserved to the United States under the provisions of the act of July 17, 1914 (38 Stat. 509), the following additional condition will be included in paragraph 7 thereof:

(*b*) To reimburse any entryman or owner of any portion of said lands heretofore entered with a reservation of the oil and gas deposits to the United States made pursuant to the act of July 17, 1914 (38 Stat. 509), for any damage to the crops and improvements of such entryman or owner resulting from drilling or other prospecting operations.

In such case the following form of bond will be required:

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

U. S. Land Office ------
Serial number ------

Bond of oil and gas permittee

[Act of February 25, 1920 (41 Stat. 437)]

Know all men by these presents, That ------ ------, of ------, State of ------ as principal, and ------ ------, of ------, State of ------, as surety, are held and firmly bound unto the United States of America, for the use and benefit of the United States, and of any entryman or owner of any of the hereinafter described lands embraced in that certain prospecting permit hereinafter referred to, in the sum of $1,000 lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

Signed with our hands and sealed with our seals this ------ day of ------, 19--.

The condition of the foregoing obligation is such that, whereas the said principal has been granted under the act of February 25, 1920 (41 Stat. 437), a permit (Serial number ----) to prospect for oil and gas for two years upon the following lands: -------------- on condition that the permittee shall (*a*) repair promptly, so far as possible, any damage to the oil strata or deposits resulting from improper methods of operation; (*b*) reimburse any entryman or owner of any portion of said lands heretofore entered with a reservation of the oil and gas deposits to the United States made pursuant to the act of July 17, 1914 (38 Stat. 509), for any damage to the crops and improvements of such entryman or owner resulting from drilling or other prospecting operations.

Now, therefore, if said principal shall promptly and in all respects comply with said conditions, then the above obligation shall be void and of no effect; otherwise and in default of full and complete compliance therewith the said obligations shall remain in full force and effect.

Signed, sealed, and delivered in the presence of:

(Name and address of witnesses)

------ ------ ------------ [L. S.]
Principal

------ ------ ------------ [L. S.]
Surety

Attorneys in fact.—In making applications for lease or permit corporations may act by attorneys in fact. Individuals and associations of individuals should execute their own papers.

Limitation of holdings.—A corporation (except under the relief sections) may not have an interest in more than three leases, either directly as a lessee, or indirectly as a stockholder in a corporate lessee.

An individual may hold stock in any number of corporations holding leases provided his stock interests do not represent a greater acreage than 2,560 in the same producing structure, or 7,680 acres in the same State.

Alien ownership.—Aliens may not have any direct holding of lease under the oil-leasing act, but may be stockholders in American corporations holding leases, provided the laws of their country do not deny like privilege to American citizens. American corporations, some of whose stock is owned by aliens, may make application for lease with a full disclosure of the residence and citizenship of its stockholders, and the department will then determine whether a lease may be granted.

Conflicting preference rights under sections 19 and 20.—The preference right attaches to the claim first initiated and legally maintained. A locator of a mining claim who has complied with all the provisions of section 19 of the act will be entitled to a preference right over a homestead entryman whose entry was made after the location, the homesteader, however, being entitled to hold the surface right. If the homestead entry was made prior to the date of the placer location, the homestead claimant will have the superior right, except in the case of a stock-raising homestead, wherein all minerals are reserved to the United States.

Permit for unwithdrawn land covered by agricultural entry.—No permit will be granted until entryman has elected to take patent with reservation of oil and gas to the United States. If such a waiver is filed, entryman may then exercise his preference right, if any, to permit for lands covered by such entry.

Preference rights under section 20.—Preference rights under section 20 exists in cases where entry was made prior to February 25, 1920, for unwithdrawn or unclassified lands, without any reservation of the minerals by the United States, and thereafter the claimant files a waiver of his right under the entry to the oil or gas. No preference right exists where land is covered by stock-raising entry, nor where entry is made subject to the act of July 17, 1914, with oil and gas reservations.

Assignability of permits.—Assignment of a mere right to a permit will not be recognized, but after permit is granted it may be assigned upon consent of the Secretary of the Interior first had and obtained.

Incontiguous tracts.—Incontiguous tracts within a limited radius may be included in a permit where conditions are such that because of prior disposals, a reasonable area of contiguous land can not be procured.

Pending application for permit, land designated as oil structure.[17]—Where after application under section 13 for a permit and before permit is granted the land is designated as within the structure of a producing oil or gas field, permit can not be allowed.

Preference right under section 20.—A permit to prospect will be granted an applicant entitled thereto under section 20 of the act, notwithstanding the land is part of a producing oil structure, but only one permit may be granted in the same structure to the same applicant.

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[17] See instructions of Apr. 23, 1921, p. 915.

Carey Act segregation as affected by leasing law.—The lands in a Carey Act segregation come under the provisions of section 2 of the oil and gas regulations, and permits and leases may be granted for such lands, subject to such stipulations and requirements as the Government may impose for the protection of the reclamation project, to the end that the best development of the lands, both for mineral and agricultural purposes, may be accomplished.

Neither the State nor its contractor would be entitled to any preference right under section 20 of the act, and whether a Carey Act entryman would have such a right would depend upon the conditions affecting his entry being such as to bring him within the provisions of section 20.

Office practice—Conflicting applications.—The issuance of a permit should be deferred, where all is regular and the applicant appears entitled to the permit, until the conflicting applicants have been notified that their applications have been rejected, because subsequent in time, subject to the right to show cause or to appeal within 15 days from receipt of notice.

Posting notice by agent.—Under the law, the action of an agent in posting notice is the action of his principal, but the application for permit may not be executed by agent, unless applicant is a corporation.

Permits of corporations as affected by stockholders' permits.—The maximum number of permits to a corporation under section 13 of the act is not limited by permits of individual stockholders, but a corporation may not have an interest in more than three permits in same State, nor in more than one in the same geologic structure, directly or indirectly. An individual may hold a direct interest in not more than three permits and his total interest as permittee and stockholder may not exceed an aggregate of 7,680 acres in the same State, or 2,560 acres in the same geologic structure.[h]

Preference right permits to qualified assignees.—Section 19 of the act of February 25, 1920, is construed to permit qualified assignees since October 1, 1919, to secure preference right permits, but no such transferee will be permitted to hold permits exceeding 2,560 acres for such lands in the same geologic structure, nor more than three times that area in the same State.[h]

Permits in Alaska.—The same rule applies in Alaska as in the States, that is, not more than one permit in the same structure.[h]

Rights under "paper locations."—Arguments have been presented in favor of a construction of section 37 of the leasing act that would have the result of validating so-called "paper locations" of placer mining claims and assuring the ultimate right to absolute patent to such claims in case of discovery. Such locations consist merely of setting stakes to indicate the boundaries, posting a notice, and perhaps filing that notice in a proper recording office. It is understood that practically all the public domain having known possible prospective value for oil, is covered by such locations. It is not believed that Congress had any such intention or that the language of the act justifies any such conclusion.

Under the express requirements of the mining laws and the decisions of the courts covering a long period of years, discovery of mineral has been the sole basis for the location of a mining claim. Without such discovery the mere posting of notices and marking the boundaries creates no right whatever.

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[h] See Circulars Nos. 1073, p. 937, and 1129, p. 962.

The mining law gives the right to any citizen to explore the public domain for the purpose of finding mineral; hence, the courts have protected a citizen in actual, physical possession of a prospective claim on the public domain, while he is engaged in diligent prosecution of work leading to the discovery of mineral, but this is as far as the courts have gone. As applied to oil lands, this rule was well stated by the Supreme Court of California, in the case of McLemore *v.* Express Oil Co. (158 Calif., 559), in the following language:

> But where the location is incomplete no question of assessment work is involved. What the attempting locator has is the right to continue in possession, undisturbed by any form of hostile or clandestine entry, while he is diligently prosecuting his work to a discovery. This diligent prosecution of the work of discovery does not mean the doing of assessment work. It does not mean any attempted holding, by cabin, lumber pile, or unused derrick. It means the diligent, continuous prosecution of the work, with the expenditure of whatever money may be necessary to the end in view.

These propositions of law were reiterated by the United States Supreme Court as recently as March 15, 1920, in the case of Cole *v.* Ralph.

From the foregoing it will be seen that no rights whatever could be obtained by mere staking and posting unless such act was followed up with diligent and continuous work leading to discovery. Section 37 of the new leasing act excepts from the operation of that act "valid claims existent at date of passage of this act and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery." Obviously a valid claim under the former law is one that the courts and the Land Department will protect and respect as against the claims of others. The mere staking and posting of notices do not constitute such a claim, and the regulations so hold.

Any other view as to the construction of section 37 is inconsistent with the provisions of other sections of the leasing law. Section 19 provides for relief, so-called, for those persons who initiated claims on the public domain at a time when the lands were not withdrawn or classified, and who, at the date of the act, had not perfected such claims by discovery, and it further provides that where such a claimant had expended an amount equal in the aggregate to $250 toward the development of his claim, such claimant, if in good faith and the claim was initiated prior to October 1, 1919, would be entitled to a prospector's permit for the area embraced in his claim.

The provisions of the relief sections (18, 18*a*, 19, and 22) were the subject of extended consideration by the committees of Congress, and it is clear that the provisions of section 19 are just as far as Congress intended to go in the protection of claims and locations of the class here under discussion. To construe the act as validating mere "paper locations" would be placing Congress and this department in the position of saying that one who had expended $250 on his claim would be entitled only to a prospecting permit, while one who had only a stake and notice would be left with the privilege for an indefinite time of ultimately getting absolute title. It is further argued that under the act claimant has the option of taking a relief permit under section 19 or standing on his " paper location " under section 37. One might as logically argue that claims for relief under section 18, over which there has been so much controversy, may now go to absolute patent by virtue of section 37. Congress never contemplated any such anomalous situation.

If the view urged in these arguments were adopted, there would be little use for a leasing act for oil lands outside the withdrawn areas, and perhaps for lands within such areas. The purpose and policy sought to be accomplished by this important legislation would be largely negatived, and the States and the Reclamation Service would be deprived of funds they are counting on for development purposes. Moreover, there is no practical necessity for the construction urged to protect any legitimate interest. The new law is liberal in the extreme in giving all good-faith claimants, who have made any material expenditures on the ground, fair and reasonable opportunity to transmute such claims into permits and leases under the new law under far more practical working conditions than existed under the former laws.

Oil-land leases—Stock-raising homesteads.—The question has arisen as to whether or not the provisions of section 20 of the leasing act are applicable to lands covered by stock-raising homestead entries.

Section 20 is one of the so-called relief sections of the law, all of which sections are based upon alleged equities of the persons to whom a preference right to a permit or lease is accorded. It was designed to recognize the equities of persons who had gone upon the public domain and made homestead entries under the 160 or 320 acre homestead law, neither of which contains any reservation of minerals, upon the theory and under the belief that they were obtaining an unrestricted title to the land. Because of a subsequent withdrawal or classification of the land as mineral after the allowance of their entries, and after they had spent their time and money upon the land, they were under the necessity of either losing the land entirely or accepting a patent under the provisions of the act of July 17, 1914, reserving the oil and gas deposits in the land to the United States. No such equity or reason exists in the case of entries under the 160 or 320 acre homestead law made upon lands theretofore withdrawn or classified as mineral, because the entryman knew at the time he made the entry that the mineral was known and reserved to the United States, and the most he could obtain was a patent expressly excluding the oil and gas deposits. This is true of all stock-raising homestead entries; for by the terms of the act itself all minerals within the land are expressly reserved to the United States, together with the right to enter upon the lands, mine and remove the same.

Lands within stock-raising homestead entries need not be withdrawn or classified for the purpose of preventing disposition of minerals under the agricultural land laws, because the minerals are reserved in the law itself. It is, therefore, clear that Congress, when it used in section 20 of the leasing act, the words " lands bona fide entered as agricultural and not withdrawn or classified as mineral at the time of entry," had in mind only the entries under the 160 or 320 acre homestead law, which contains no reservation or classification of mineral, and where subsequently, by reason of a withdrawal or classification, the entryman was, as stated above, under the necessity of accepting a restricted patent. Any other construction of the statute would involve the disregarding of the language "and not withdrawn or classified as mineral at the time of entry."

The regulations specifically state that the preference right under section 20 of the act exists only where the land was entered prior to withdrawal or classification, and subsequent to entry was withdrawn or classified as oil or gas bearing in character. This clearly could have no application to entries under the stock-raising homestead law, where all minerals are reserved and where no withdrawal or classification is necessary.

Preferential rights of agricultural claimants.—Whatever preferential rights homesteaders or other agricultural entrymen as such may have to oil permits or leases must be found in section 20 of the act. While this section is not as clear and specific in some respects as might be desired, it is apparent that the class of entrymen or patentees on which Congress intended by this section to confer a preference right is those who made their entries when the land was not withdrawn or classified as mineral, and who were therefore permitted to make their entries without any reservation of the mineral to the Government, but were or will be compelled to take a patent with the reservation because of a withdrawal or classification of the land, or because in the meantime the land has become of known mineral character, before submission of final proof. It is also apparent that this section is in the nature of a relief provision, designed to take care of those who found themselves in the situation above described at the time the act was passed, and not intended to provide generally for the disposition of mineral rights under the homestead law in the future.

With these general propositions in mind, the following specific statements may be made:

1. If the land was withdrawn or classified at the time of entry so that the entry was made with a reservation of the mineral, there is no preference right. Conversely, to entitle the homesteader to a preference right the entry must have been properly made without a reservation of the mineral.
2. There can be no preference right on an entry allowed after February 25, 1920. See section 12 of the regulations.
3. There can be no preference right on a stock-raising entry under the act of December 29, 1916, for under that act all entries are made with a reservation of the mineral.
4. If the homestead entry was made without reservation of the mineral, but after the lands were of known mineral character, and for the purpose of acquiring mineral rights, there is no preference right to a permit because (*a*) such an entry should have been made with a reservation of the mineral and the requisite nonmineral affidavit on which the entry was procured was fraudulent, and (*b*) the entry is not "of lands bona fide entered as agricultural."
5. But where one has an original entry under the 160 or 320 acre law and an additional entry under the stock-raising (640-acre) law, the entryman will have the same rights under the original as he would have had had he not made the additional.
6. Where one has an entry without a reservation of the mineral, nobody (not even the entryman himself) may acquire a permit or lease for the mineral so long as the entry stands in that shape.
7. But if the entryman in the case last above mentioned files a waiver of the mineral rights in the land, then he may exercise his preference right, if he has any, and if not, others may file application for a mineral permit or lease.
8. The "reservation" of the mineral above referred to is pursuant to section 2 of the act of July 17, 1914 (38 Stat. 509), which provides that the mineral occupant shall pay any damage caused to the agricultural claimant.

9. Where a patented entry, or one on which final certificate has issued, has been sold or transferred, the transferee would have the same rights as the entryman, provided he acquired the land before January 1, 1918, but if he acquired it after that date, there would be no preference right in anybody.

10. A patentee, or entryman with final certificate, with a reservation of the mineral to the Government, who has a preference right can not withhold the land from development indefinitely. Section 12 of the regulations provides that if anybody else applies for a permit on the land, the preference-right man shall be given notice and allowed 30 days within which to exercise his preference and apply for a permit himself; otherwise he will be out.

11. The preference-right claimant must be qualified to take a permit under the law the same as anybody else; for instance, an alien transferee of patented land could not get a permit or lease; one who has already received the limit of permits allowed could not get a permit.

12. The matter of whether the agricultural entry on which a preference right to a permit is predicated is within or without a known producing structure cuts no figure in connection with the preference rights here under consideration, provided that only one permit may be granted to the same structure.

13. In case of conflict between a preference-right claimant under sections 18 and 19 and one under section 20 the one would prevail whose rights were prior in their lawful inception.

Conflicts between nonmineral claims and oil placers.—When an otherwise valid oil-placer location is perfected by discovery the land is not subject to other appropriation so long as the mining claim is maintained, and should it be entered or applied for under some other law prior to the filing of an application for patent by the mining claimant the burden of protecting his claim by contest will rest upon him. This is necessarily so, as the land is not segregated from record entry by a mere mining location of which the land department has no record.

An oil placer location, perfected by discovery, laid over land embraced in a prior, valid, subsisting homestead entry, is ineffective so long as the homestead stands. (Prior to the act of July 17, 1914, the mineral claimant could contest the homestead and cause its cancellation; under that act the homesteader may retain surface rights and the mineral is automatically withdrawn; and under the leasing act the homesteader might have a preference right to a permit for the mineral.) A stock-raising homestead is an exception to this rule, for all minerals are reserved therefrom, and the oil deposits could have been located under the placer law up to February 25, 1920.

A mere "paper" oil placer location (that is, one without a discovery) will not prevent a homestead entry for the land, but where the claimant of a "paper location" is on the ground in diligent prosecution of work leading to discovery at the time the land is homesteaded, he may by contest defeat the homestead entry.

The allowance (after February 25, 1920) of a homestead entry on land covered by valid rights to relief permits or leases under sections 18 or 19, is entirely within the discretion of the Secretary of the Interior.

Reservation of mineral—When required.—Where a homestead entry (not under the grazing act) is made without a reservation of the oil to the Government and the land is withdrawn or classified as oil land before completed final proof is submitted, the entryman must take patent with a reservation of the oil, unless he can procure a reclassification of the land by the department or a removal of the withdrawal, or unless he can show at a hearing (the burden of proof being on him) that the land was not of a known mineral character at date of final proof.

But where, in the case last stated, the withdrawal or classification as mineral was not made until after final proof was submitted, the entryman will be entitled to a patent without a reservation, unless the Government can show (the burden of proof being on the Government), at a hearing if necessary, that the land was of known mineral character at the date of final proof. If the Government can show this, the result will be the same regardless of whether there has been a withdrawal or classification.

Interests under drilling contracts.—A drilling contract carrying with it a right in the proceeds, or in the land itself, will be considered an interest in the lease, and when it comes time to grant a lease such drilling contractor will have to show himself qualified to take a lease. In all cases where the drilling is performed under contract the nature and terms of the contract must be disclosed before lease is granted.

As to permits, the situation is different. If a contractor desires to be recognized by the department in connection with a permit, it will be necessary for him to file his contract for approval; but if he so desires he may explore the land under contract with the permittee and bring his contract to the attention of the department only when and if he wishes to be recognized as being interested in such lease as may be applied for.

Discovery on adjoining claims.—In case of two claims that adjoin, it is necessary to have discovery on each claim to secure lease for both under section 18. If the discovery is only on one claim, the lease must be confined to the limits of the claim containing the discovery.

Right of assignees to a lease under section 18.—Good faith locators or their grantees, whose right to a lease is governed by the provisions of section 18 of the act, may transfer their interests to contractors, assignees, or lessees who were in undisputed possession prior to July 1, 1919; and such owners may then jointly apply for a lease for their aggregate holdings or they may make a division of the area and each seek a separate lease for his individual holdings.

Discovery applicable to all parts of location.—A discovery on any part of a placer claim used as a basis for relief under sections 18, 19, or 22 of the act will be deemed applicable to every part thereof for leasing purposes.

Only citizens may obtain permits or leases.—The oil and gas leasing bill provides for the issuance of prospecting permits and leases to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States or of any State or Territory thereof, or municipalities. It follows from this that no one but a citizen can obtain a lease or permit, but aliens may be stockholders in some cases.

Citizenship of agent immaterial.—A notice of a prospecting permit may be posted by an agent or attorney in fact in the name of his principal. The citizenship of such agent is immaterial.

Oil claims antedating leasing act.—Oil placer claims for unwithdrawn and unclassified lands upon which discovery was made prior to the enactment of the mineral leasing law are not, in the absence of fraud, affected thereby so long as the claimant complies with the law. If discovery was not made, the claimant in order to protect his right to a patent, must have been engaged in diligent work leading to a discovery at the date of the act and must be able to show that he has continued such work to discovery.

Preference right of State grantee.—To entitle the grantee of a State to a preference right under section 20 of the mineral leasing law, the selection must have been approved and transferred by the State prior to January 1, 1918.

When the mineral leasing act took effect.—Under the general rule of law applicable to such cases, the act of February 25, 1920, was in force and operation during that entire day, subject, however, to the privilege of any person having a substantial right which would be affected by the application of the general rule to prove, if he can, the exact time of approval.

The act of February 25, 1920, supra, section 13, authorizes the Secretary of the Interior, under such rules as he may prescribe, to grant to qualified persons a prospecting permit " upon not to exceed 2,560 acres of land," and allows would-be applicants to initiate a preference right, good for 30 days, by posting notice upon the ground. This statute and the rules and regulations promulgated thereunder do not, however, confer upon such locators a right to obtain a prospecting permit for the entire acreage described in any notice of location. The statute simply fixes the maximum amount which may be embraced in a single permit, 2,560 acres.

Paragraph 2 of the regulations approved March 11, 1920, states that the granting of such a permit " is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or its entirety, as the facts may be deemed to warrant."

Subject to the foregoing, the following rule is announced for the guidance of the officers of the Interior Department and of parties in interest in the disposition of conflicts and controversies arising out of locations and applications made or filed during the day of February 25, 1920:

All locations made or applications filed, pursuant to section 13 of the act of February 25, 1920, at any time during the day of February 25, 1920, will be held, treated, and regarded as simultaneous, and in case of conflict of location and application, in whole or in part, between two or more qualified applicants, all such applicants will be allowed 30 days from notice within which to compromise their differences by division of lands or otherwise, in default of which this department will make such division or disposition as the facts may warrant.

Limitations under section 27.[18]—It will be noted that section 27 seems to apply to two classes of interests, namely, those held directly from the Government and those held indirectly through ownership of stock in corporations. As to leases held directly, there does not seem to be much doubt that the same person or corporation may not at the same time have more than three leases in any one State, or more than one lease within the geologic structure of the same producing oil or gas field.

The section further provides that " no corporation shall hold any interest as a stockholder of another corporation in more than such number of leases." This language, taken in conjunction with the language preceding it, seems to hold that a corporation may not have an interest in more than three leases, either directly as a lessee, or indirectly as a stockholder in a corporate lessee. True, the next clause provides that "no person or corporation shall take or hold any interest or interests as a member of an association or associations, or as a stockholder of a corporation or corporations," in which the aggregate leasehold interests exceed an amount equivalent to the maximum number of acres allowed to one lessee. It is clear that as to a corporation the clause last quoted is inconsistent with the clause first quoted, and as the clause first quoted is more restrictive as to a corporation than the following clause, it is considered that the former controls. But this leaves an individual with the right to hold three leases directly, and, at the same time, to have a stock interest in corporations having leases, provided his direct and indirect holdings do not exceed the maximum for one person, namely, not exceeding 2,560 acres in the same structure or 7,680 in the same State. It follows also that a person may hold stock in any number of corporations holding leases provided his stock interests do not represent a greater acreage than that above stated.

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[18] See Circulars Nos. 1073, p. 937, and 1129, p. 962.

While under the regulations substantially the same restrictions apply to permits as apply to leases, the number of leases one has will not necessarily limit the number of permits he may have, but when a permit ripens into a lease, then the restrictions as to leases apply to both.

Bond with preference right application.—In the case of a preference right application under section 19, the bond may be filed therewith, or deferred until permit is authorized.

Articles of incorporation.—Under section 25 of the regulations, a certified copy of the articles of incorporation should be filed with the original application, but an uncertified copy is sufficient to accompany the duplicate.

Rights of association in geologic structure.—An association may hold only one permit in the same geologic structure, and the interest of a member of different associations may aggregate 2,560 acres in the same structure.

Ceded Ute Indian lands subject to leasing act.—By departmental decision of August 9, 1920, it was held that the oil and gas deposits contained in that portion of the Ute Indian Reservation in the State of Colorado formerly occupied by the Uncompahgre and White River Utes, ceded to the United States by the confederated bands of Ute Indians by the treaty of March 2, 1868, as amended, accepted, and ratified by the act of June 15, 1880 (21 Stat. 199), and opened to disposal under the provisions of the act of July 28, 1882 (22 Stat. 178), are subject to disposal under the mineral leasing act.

Uintah ceded Indian lands subject to leasing act.—The Uintah Indian lands opened to sale and entry by act of May 27, 1902, (32 Stat. 263), are subject to the operation of the leasing act of February 25, 1920.

[Reported, 47 L. D. 513]

CIRCULAR No. 696[6]

PHOSPHATE REGULATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 22, 1920.

Registers and Receivers, United States Land Offices.

SIRS: Sections 9 to 12, inclusive, of the act of Congress approved February 25, 1920 (41 Stat. 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," authorize the Secretary of the Interior to lease lands belonging to the United States containing deposits of phosphates, and accordingly the following rules and regulations are prescribed for the administration of the provisions of said sections of the act:

1. *Lands to which applicable.*—The act applies to the lands belonging to the United States containing deposits of phosphates, including lands in national forests and including the phosphate deposits reserved under laws authorizing entries and patents with reservation to the United States of such deposits; also to phosphate lands in ceded or restored Indian reservations the proceeds from the disposition of which are the property of the United States. The act is not applicable to lands in the Appalachian Forest Reserve (under act of March 1, 1911, 36 Stats. 961), lands in national parks, lands withdrawn for military or naval purposes, or lands in ceded or restored Indian reservations the proceeds from the disposition of which belong to the Indians.

All leases of phosphate deposits within the limits of national forests or other reservations or withdrawals to which the act is applicable shall be subject to and contain such conditions, stipulations, and reservations as the Secretary of the Interior shall deem necessary for the protection of the forests, reservations or withdrawals, and the uses and purposes for which created.

2. *Leasing area.*—Leases may embrace not exceeding 2,560 acres of lands or deposits, in compact form, the length of which shall not exceed two and one-half times its width. If surveyed, the lands must be taken by legal subdivisions of such survey; and if unsurveyed, to be surveyed by the Government at the expense of the applicant prior to the issuance of lease. Such surveys will be made under the regulations governing public land surveys, prior to the execution of which applicants will be required to deposit with the United States surveyor general the estimated expense thereof.

3. *Qualifications of applicants.*—Leases may be issued to (*a*) citizens of the United States, (*b*) associations of citizens, and (*c*) to corporations organized under the laws of the United States or of any State or Territory thereof.

4.[7] *Minimum development.*—An actual bona fide expenditure for mine operations, development or improvement purposes of the amount determined by the Secretary of the Interior will be a condition in each lease as the minimum basis on which each lease will be granted, with the requirement that not less than one-third of such proposed investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. A bond executed by the lessee with approved corporate surety will be required to be furnished in the sum of $10,000, conditioned upon the expenditure of the specified amount of investment. After said investment has been made a similar bond in the sum of $5,000, conditioned upon compliance with the terms of the lease will be required.

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[6] Amended by Circular No. 936, p. 928.

[7] See amendment, p. 928.

5.[8] *Minimum production.*—Under the provision of the act requiring leases to be for indeterminate periods upon condition of a minimum annual production after the first three years, except where interrupted by strikes, the elements or casualties not attributable to the lessee, each lease will contain appropriate conditions fixing such minimum production of phosphates or phosphate rock from the land.

6. *Application for lease.*—Application for a lease must be under oath and filed in the proper district land office, addressed to the Commissioner of the General Land Office. No specific form is required and no blanks will be furnished, but the application should cover the following points:

(*a*) Applicant's name and address.

(*b*) Citizenship of applicant, whether native born or naturalized; and if naturalized, furnish a certificate thereof in the form provided for use in public land matters, if one is not already on file in the Land Department; if an association, citizenship of each member must be shown; if a corporation, furnish a certified copy of its articles of incorporation and a showing as to the residence and citizenship of its stockholders.

(*c*) A statement that the applicant holds no lease of phosphate lands under said act within the State in which the land is situated; nor, as a member of an association or stockholder in a corporation, holds any interest or interests in any lease or leases of phosphate lands under said act, which, together with the lands applied for, exceed in the aggregate 2,560 acres.

(*d*) Description of the land, whether vacant or unclaimed; if surveyed, by legal subdivisions; if unsurveyed, by metes and bounds, and where possible by the approximate subdivisions the land will be when surveyed. If the land is unsurveyed, a survey thereof at the expense of the applicant must be provided for prior to the execution of a lease thereof, as provided in section 10 of the act.

(*e*) Description of the phosphate deposits in the land, giving nature and extent thereof; the proposed method of mining and reduction of same; and proposed investment in mining operations thereon and reduction facilities therefor if a lease be granted the applicant.

7.[9] *Action by local office.*—Registers and receivers will assign current serial numbers to such applications when filed, promptly note their records, and require a notice of the application to be published at the expense of the applicant for a period of 30 days in a newspaper of general circulation in the county in which the deposits are situated, advising all adverse claimants or protestants that if they desire to object, or protect any interest as against the applicant, prompt action to that end should be taken, and upon proof of such publication, transmit the applications to the General Land Office with report of record status of the land described therein.

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[8] See amendment, p. 928.

[9] See instructions of Oct. 19, 1929, p. 1149.

After receipt of such an application, no filing for any of the land described therein will be accepted until so directed, unless the application be rejected.

8. *Action on application.*—Upon consideration of the application in the General Land Office, if the tracts of land or deposits are found subject to lease and the application is otherwise satisfactory, a lease substantially in the form herewith will be submitted to the applicant for his execution.

9. *Action by successful applicant.*—The successful applicant will be allowed 30 days after receipt of the lease for execution within which to (*a*) file in the district office the lease duly executed by him in triplicate and in the form herein prescribed; (*b*) file evidence of citizenship and qualifications as required by paragraph 6 hereof, if not theretofore filed by him; (*c*) file the bond required by paragraph 2 *b* of the lease, or United States bonds in lieu thereof under the act of February 24, 1919 (40 Stat. 1148); and (*d*) pay the annual rental for the first year of the lease.

10. *Action by local office.*—At the end of the 30 days allowed the successful applicant, or sooner if the foregoing be complied with by him, the local officers will forward by special letter all papers with full report of action taken.

11. *Form of lease.*—Leases hereunder will be in substantially the following form:

Land Office at______________________
Serial No__________________________

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR

MINING LEASE OF PHOSPHATE LANDS UNDER ACT OF FEBRUARY 25, 1920

This indenture of lease, entered into, in triplicate, this______day of______, A. D. 19__, by and between the United States of America, acting in this behalf by______, Secretary of the Interior, party of the first part, hereinafter called the lessor, and __________ of __________, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress, approved February 25, 1920 (41 Stat. 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereinafter called the "act."

Witnesseth:

That the lessor, in consideration of the rents and royalties to be paid and the covenants to be observed as hereinafter set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the phosphate and phosphate rock in, upon, or under the following described tracts of land, situated in the State of __________, to wit: __________________
____

containing __________ acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the phosphates for market, the manufacture of products thereof, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges granted.

SECTION 1. That the lessor expressly reserves:

(1a) The right to permit for joint or several use such easements or rights of way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in said act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(1b) The right to lease, sell, or otherwise dispose of the surface of said lands or any part thereof under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in the mining and removal of the phosphates therein, and to lease other mineral deposits in the lands, under the provisions of said act.

(1c) Full power and authority to carry out and enforce all the provisions of section 30 of said act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

SEC. 2. The lessee in consideration of the lease of the rights and privileges aforesaid hereby covenants and agrees as follows:

(2a) To invest in actual mining operations, development or improvements upon the land leased, or for the benefit thereof, the sum of ---------- dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during such year.

(2b) To furnish a bond in the sum of $10,000, conditioned upon the expenditure of the amount specified herein, (2a), and after said investment has been made, a similar bond in the sum of $5,000, conditioned upon compliance with the terms and provisions of this lease.

(2c) To pay as an annual rental for each acre or part thereof covered by this lease the sum of 25 cents per acre for the first year, payment of which amount is hereby acknowledged, the sum of 50 cents per acre per year for the second, third, fourth, and fifth years, and $1 per acre for the sixth and each succeeding year during the life of this lease, all such annual payments of rental to be made to the receiver of the United States land office of the district in which said land is situated, on the anniversary of the date hereof, and to be credited on the first royalties to become due hereunder during the year for which said rental was paid.

(2d) To pay to such receiver a royalty of ---- per cent, (not less than 2 per cent), of the gross value of the output of phosphates or phosphate rock at the mine during the first 20 years succeeding the execution of this lease. (Special provisions suited to operations under the lease may be here inserted if found necessary.) Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the phosphates are mined.

(2e) To determine accurately the weight or quality of all phosphates or phosphate rock mined from the leased premises, and to accurately enter the weight or quantity thereof in due form in books to be kept and preserved by the lessee for such purpose.

(2f) To furnish quarterly, within 30 days after the expiration of the quarter, a written report covering such quarter, certified under oath by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the amount of phosphate or phosphate rock mined during the quarter, the character and quality thereof, and amount of its products and by-products disposed of and price received therefor, and amount of phosphates or phosphate rock and its products in storage or held for sale.

(2g) Also to furnish in such manner and form as may be prescribed by the lessor, at the end of each year, beginning on the first anniversary of the date of the lease, and at such other times as the lessor may require, a plat showing all development work and improvements on the leased lands, and other related information, with a report under oath as to all buildings, structures, or other works placed in or upon said leased lands, accompanied by a report in detail as to the stockholders, investment, depreciation, and cost of operation, together with a statement as to the amount of phosphate or phosphate rock produced and sold, and the amount received therefor, by operations hereunder.

(2h) To keep at the mine office clear, accurate, and detailed maps, on a scale not more than 200 feet to the inch, in the form of horizontal projections on tracing cloth, of the workings in each phosphate bed in each separate mine on the leased lands, a separate map to be made for each such bed, and for the surface immediately over the underground workings, and to be so arranged with reference to a public land corner that the maps can be readily superimposed.

Blue prints or reproductions in duplicate of the maps required as aforesaid shall be furnished the lessor when made, and supplemental prints or reproductions in duplicate furnished on or before the first day of each succeeding year, showing the extensions, additions, and changes since the last map or supplement was submitted. All mine progress maps kept by the lessee shall at all times be subject to examination by lessor.

(2i). That, beginning with the fourth year of the lease, except when such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, the lessee shall mine each year and pay a royalty thereon, not less than ---------- tons of phosphate rock from the leased premises, unless operations are suspended as provided in section 11 of the act.

(2j) That the lessee shall not assign this lease or any interest therein, nor sublet any portion of the leased premises without the written consent of the lessor being first had and obtained.

Sec. 3. It is mutually understood and agreed that the lessor shall have the right to readjust and fix the royalties payable hereunder and other terms and conditions including amount of minimum annual production, at the end of 20 years from the date hereof, and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period, but in case the lessee be dissatisfied with the rate of royalty or other terms and conditions so fixed, he may terminate this lease in the manner and under the conditions provided in sections 6 (b) and 6 (c) hereof.

Sec. 4. This lease is made subject to the following provisions, which the lessee accepts and covenants faithfully to perform and observe, unless the laws of the State where the leased land or deposits are situated otherwise provides, in which case such State laws control:

(4a) The lessee shall carry out and observe regulations prescribed by the Secretary of the Interior and in force at the date hereof relative to (1) reasonable diligence, skill, and care in the operation of said property in accordance with approved methods and practices, (2) the prevention of undue waste, and (3) the safety and welfare of miners.

(4b) And also shall pay all miners and other employees, both above and below ground, at least twice each month in lawful money of the United States, and shall permit such miners and other employees full and complete freedom of purchase, but with a view to increasing safety this provision shall not apply to the purchase of explosives, detonators, or fuses; and shall not require or permit miners or other employees, except in case of emergency, to work underground for more than eight hours in any one workday, and shall not employ any boy under the age of 16 years or any girl or woman without regard to age in any mine below the surface.

Sec. 5. And the lessee also expressly agrees that all mining and related operations shall be subject to the inspection of authorized representatives of the lessor, and that such representatives may at all times enter into and upon the leased lands and survey and examine same and all surface and underground improvements, works, machinery, equipment, and operations.

(5a) And also shall permit the lessor to examine all books and records pertaining to operations under this lease and to make copies of and extracts from any or all of same, if desired.

(5b) And also shall permit the lessor, or its lessees or transferees, with the approval of the lessor, to make and use upon or under the leased lands any workings necessary for freeing any other mine from water or gas, or extinguishing fires, causing as little damage or interference as possible to or with the mine or mining operations of the lessee hereunder: *Provided,* That any such use by a transferee or another lessee shall be conditioned upon the payment to the lessee hereunder of the amount of actual damages sustained thereby and adequate compensation for such use.

(5c) And also shall, at the termination of this lease, as the result of forfeiture thereof, pursuant to paragraph (6d), deliver up to the lessor the lands covered thereby, including all fixtures, machinery, improvements, and appurtenances, other than strictly personal property, situate on any of said lands, in good order and condition, so as to permit of immediate continued operation to the full extent and capacity of the leased premises.

SEC. 6. It is further mutually understood and agreed as follows:

(6a) That the lessor may in writing waive any breach of the covenants and conditions contained herein except such as are required by the act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

(6b) The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; and the lessee may with like consent surrender any legal subdivision of the area included within the lease; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered hereby.

(6c) That on the termination of this lease, pursuant to the last preceding paragraph, the lessor, his agent, licensee, or lessee shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, all buildings, machinery, equipment, and tools, placed by the lessee in or on the land leased hereunder, save and except all underground timbering, and such other supports and structures as are necessary for the preservation of the mine, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid, shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party hereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings or other property shall be removed from their normal position; that if such valuation be not requested, or the lessor shall affirmatively elect not to purchase within said period of six months, the lessee shall have the privilege of removing said buildings and other property, except said timbering and other supports and structures, as are necessary for the preservation of the mine, as aforesaid.

(6d) If the lessee shall fail to comply with the provision of the act or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or in the general regulations promulgated and in force at date hereof, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act, but this provision shall not be construed as depriving the lessor of any legal or equitable remedy which the lessor might otherwise have.

SEC. 7. It is further covenanted and agreed that, should the lessee fail to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the lessee.

SEC. 8. It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

SEC. 9. It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United

States and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By ______________________________
Secretary of the Interior, Lessor.

Witnesses:
____
____
Lessee.

____
____
____
____

12. *Use permits for additional lands.*—Under section 12 of the act a lessee may be granted a right to use the surface of not exceeding 40 acres of unappropriated and unentered land as may be necessary for the proper prospecting for or development, extraction, treatment, or removal of the phosphate deposits in the leased lands.

Applications for permits for such additional tracts shall be filed in the district office having jurisdiction over the lands and should identify the lease by the serial number under which issued, and be filed under the same number. Such applications must be under oath and set forth the specific reasons why the additional tract is necessary to the lessee for the use named, describe the land desired by legal subdivision if surveyed, and if unsurveyed, by the approximate description it will be when surveyed, and also set forth the reasons why the land is desirable and adapted to the uses named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated.

FORM OF USE PERMIT UNDER SECTION 12

Land Office at__________
Serial No_______________

THE UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR

USE PERMIT UNDER SECTION 12, ACT OF FEBRUARY 25, 1920

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the act of Congress approved February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," hereby grants to __________, holder of lease bearing serial No. __________, the exclusive right, so long as needed, used, and occupied during the life of the aforesaid lease, the use of the surface of the following described tract of land, to wit, ____ for the proper prospecting for or development, extraction, treatment, or removal of the phosphate deposits covered by the aforesaid lease, all rights hereunder to cease and terminate upon the termination of the aforesaid lease.

Dated this __________ day of __________, 19__.

______________________________,
Secretary of the Interior.

13. *Repealing and saving clause.*—Section 37 of the act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the act may be disposed of only in the manner provided by the act, " except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be per-

fected under said laws, including discovery." As to phosphate claims, those claims initiated under the preexisting law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

14. *Fees and commissions.*—(*a*) For receiving and acting upon each application for lease filed in the district land office in accordance with these regulations, there shall be paid by the applicant a fee of $2 for every 160 acres or fraction thereof in the application, such fee in no case to be less than $10, the same to be considered as earned when paid, and to be credited in equal parts to the compensation of the register and receiver within the limitations provided by law.

(*b*) Registers and receivers shall be entitled to a commission of 1 per cent of all moneys received in each register's office, to be equally divided between the register and receiver. Such commission will not be collected from the applicant or lessee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the act, as provided in section 35 thereof; also that such commissions will be credited on compensation of registers and receivers only to the extent of the limitation provided by law for maximum compensation of such officers.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved May 22, 1920.

JOHN BARTON PAYNE,
Secretary of the Interior.

(Act omitted.)

[Reported, 47 L. D. 474]

PROCEDURE IN RELATION TO AGRICULTURAL CLAIMS IN CONFLICT WITH PERMITS OR LEASES, OR SUBJECT TO PREFERENTIAL RIGHTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 6, 1920.[19]

Registers and Receivers, United States Land Offices.

GENTLEMEN: Instructions have been requested from several local offices as to the proper procedure to take in connection with nonmineral applications or selections filed for lands embraced in applications for prospecting permits or leases, or which may be subject to preference rights, under the leasing act of February 25, 1920.

A prospecting permit is granted in contemplation of a future lease for a part or all of the same land in case of discovery; hence as to subsequent nonmineral entries, with a reservation of the oil or gas to the United States, the lands embraced in a prospecting permit should be treated the same as if embraced in an oil or gas lease, with a reservation to the United States of the right "to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for the use of the lessee in extracting or removing the deposits therein," pursuant to section 29 of the leasing act. As the placing of such a reservation in a lease is made discretionary with the secretary, it necessarily follows that any disposition of the surface of lands embraced in permits or leases is by the act left entirely discretionary with the Land Department, to be determined on the facts of each particular case.

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[19] Amended by Circulars Nos. 1021, p. 1416, 1031, p. 1418, and 1136, p. 1418.

The so-called relief sections of the act (18, 18 (*a*), 19, and 22) recognize equitable rights in the owners and occupants of claims initiated under the general mining laws and accord to them a preference right which may be exercised by applying within the time and in the manner prescribed by said sections for oil or gas leases or permits. These prior rights or claims, if asserted within the time accorded the claimants by the statute, are superior, both in time and right, to nonmineral applications or selections having their inception subsequent to the leasing act. It is apparent also that the allowance of nonmineral appropriation of the surface of vacant lands in producing structures will interfere with the leasing of such lands by competitive bidding under section 17 of the leasing act.

You are therefore directed:

LANDS OUTSIDE PRODUCING STRUCTURES

(1) In all cases of applications to make nonmineral entries or selections of lands outside of areas which have been designated by the department as within the geologic structures of producing oil or gas fields, and which lands are also embraced in applications for prospecting permits or in permits granted, such nonmineral applications should be received, noted on your records, suspended, and transmitted to the Commissioner of the General Land Office for instructions. If in any case such nonmineral entry or selection shall be allowed by you on instructions from the Commissioner, the same will be with a reservation of the oil or gas to the United States, and subject to the rights of the permittee or lessee, as the case may be, to use so much of the surface of such land as is necessary in extracting and removing the mineral deposits, without compensation to the nonmineral entryman for such use, in accordance with section 29 of the leasing act.

LANDS IN PRODUCING STRUCTURES

(2) You will reject all applications to enter, file upon, or select under the nonmineral land laws, lands which have been or shall be designated by the department as being within the known geologic structures of producing oil or gas fields, pending consideration by the department of the agricultural character and value of such lands and a determination as to whether the surface of the land is of agricultural character and value and may be disposed of without detriment to the public interest.

CONFLICTS WITH PREFERENCE RIGHTS

(3) All homestead entries or other nonmineral filings or selections allowed prior to receipt of these instructions and subsequent to Feb-

ruary 24, 1920, which are found to be in conflict with preference rights timely asserted under the remedial provisions of the act of February 25, 1920, shall be suspended pending the consideration of the application for the permit or lease, and the parties in interest so advised. If the permit or lease be allowed or granted, such homestead entry or other allowed nonmineral application or selection will be canceled if the lands are within designated geologic structures of producing oil or gas fields. If outside of such designations, the agricultural entries, applications, or selections will be allowed to stand or will be canceled in the discretion of the department, as provided in section 1 hereof.

LIABILITY FOR DAMAGES

(4) Your attention is drawn to the distinction which exists under the law with respect to the rights of permittees and lessees of mineral deposits in cases where the nonmineral entry or selection is allowed subsequent to the application for permit or lease or subsequent to February 25, 1920, in conflict with rights recognized by sections 18, 18 (*a*), 19, and 22 of the leasing act, and those cases where the nonmineral entry, filing, or selection with a reservation of the mineral (either at time of entry or later) under the acts of July 17, 1914 (36 Stat. 509), or December 29, 1916 (39 Stat. 862), precedes the permit lease, or mineral right, for in the latter case the nonmineral claimant is entitled to be reimbursed for all damages to crops and improvements by reason of the operations of the permittee or lessee, as provided in those acts, while in the former the respective rights of the mineral and surface claimants are governed by section 29 of the leasing act.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved October 6, 1920.

John Barton Payne, *Secretary.*

[Reported, 48 L. D. 98]

DESIGNATION OF LAND AS STRUCTURE OF PRODUCING OIL OR GAS FIELD, AFTER FILING OF APPLICATION FOR PERMIT

Department of the Interior,
Washington, April 23, 1921.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: Based upon rulings of the Secretary of the Interior, the regulations concerning oil and gas permits and leases approved October 29, 1920, state on page 36, "Where after application under section 13 for a permit and before permit is granted the land is designated as within the structure of a producing oil or gas field, permit can not be allowed."

This regulation and the rulings on which it is based were not issued under a mandatory provision of the statute, section 13 of the act of February 25, 1920, authorizing the Secretary of the Interior to grant to any qualified applicant a prospecting permit upon lands "wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field."

Rulings of this department in cases involving a like situation, arising under other land laws, are to the contrary. In the case of Charles C. Conrad (39 L. D. 432), where a homestead application was filed, and where the entryman had performed all acts necessary to complete his application, but by reason of delay in action thereupon by the local office a first form withdrawal under the reclamation act intervened, the department held that his rights could not be prejudiced by the inability of the local office to allow the application until after the withdrawal, but that they related back to the time when he filed in the local land office his application, accompanied by the required showing, including the fees, the land being then subject to his application.

This and similar rulings of the department are approved in principle by the recent decisions of the Supreme Court of the United States in cases of Payne *v.* Central Pacific Railway Co. (Feb. 28, 1921); Payne *v.* New Mexico (Mar. 7, 1921); and Wyoming *v.* United States (Mar. 28, 1921).

Applying the principle so announced, it is clear that not only equitably but legally qualified persons, who filed proper applications for oil or gas prospecting permits under the act of February 25, 1920, can not and should not be deprived of their rights if, because of delay in action upon the applications so filed, there intervenes a designation by this department of the lands as being within the geological structure of a producing oil or gas field occasioned by a discovery of oil or gas subsequent to the filing of the application in the local land office. Accordingly, said regulation is hereby revoked, and in future applications will be adjudicated in accordance with the views herein expressed.

The statute, however, specifically forbids the allowance and approval of a prospecting permit upon lands within a "known geological structure of a producing oil or gas field" (section 13), and in section 17 provision is made for the disposition of unappropriated lands in such structures by competitive bidding. Therefore, nothing in this opinion shall be construed as modifying or affecting previous decisions of this department to the effect that prospecting permits can not be allowed within the geological structure of a producing oil or gas field, so known and existing at and prior to the filing of the application for the prospecting permit.

Respectfully,

ALBERT B. FALL, *Secretary.*

[Reported, 48 L. D. 152]

CIRCULAR NO. 761

REWARD FOR DISCOVERY; AMENDMENT OF CIRCULAR 672

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 15, 1921.

Registers and Receivers, United States District Land Offices.

SIRS: The regulations pertaining to and governing oil and gas permits and leases, pursuant to the act of Congress of February 25, 1920 (41 Stat. 437), published as Circular No. 672, are hereby amended so as to incorporate therein a new paragraph, to be numbered paragraph 8 (a), reading as follows:

> 8 (a). When an application for a lease of the one-fourth part of the area affected by a prospecting permit is submitted, supported by the requisite evidence of discovery and production of oil or gas, such application must be accompanied by further application by the permittee, or by an assignee of such permittee, for a lease of the remaining portion of the area described in the permit; or, in the alternative, a relinquishment of the permit and waiver of preference right in respect of such remaining area must be submitted.

Very respectfully,

William Spry, *Commissioner.*

Approved June 15, 1921.

E. C. Finney,
Acting Secretary.

[Reported, 48 L. D. 234]

Circular No. 785

INSTRUCTIONS RELATING TO NONCOMPLIANCE WITH TERMS OF PERMIT

Department of the Interior,
General Land Office,
Washington, October 14, 1921.

Registers and Receivers, United States Land Offices.

Sirs: In the case of oil and gas prospecting permits issued under section 13 of the act of February 25, 1920 (41 Stat. 437), and where more than 12 months and 10 days have elapsed you will not call for corroborated affidavits describing the work done upon the land pursuant to the letter of the Secretary of the Interior, dated January 12, 1921, unless directed to do so by this office in any specific case.

The department, however, will consider any information as to noncompliance with the terms of a permit and should such showing be filed you will transmit same to this office for consideration.

Very respectfully,

William Spry, *Commissioner.*

Approved October 14, 1921.

E. C. Finney,
First Assistant Secretary.

[Reported, 48 L. D. 340]

Circular No. 795 [20]

INSTRUCTIONS RELATIVE TO RENTAL DEDUCTIONS IN OIL AND GAS LEASES

Department of the Interior,
General Land Office,
Washington, December 8, 1921.

Registers and Receivers, United States Land Offices.

Sirs: Section 14 of the act of February 25, 1920 (41 Stat. 437), relative to oil and gas leases, provides for the payment in advance of an annual rental of $1 per acre in cash on the acreage covered by the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year.

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[20] Modified by Circular No. 874, p. 919.

For the purpose of establishing a uniform practice of handling this rental problem the following rules are prescribed:

1. On the first day of each year of the lease, reckoned from the date stated in the first paragraph thereof, the annual rental becomes due and payable in cash. This must be paid directly to the receiver of public moneys of the land district in which the land is situated.
2. In the event the royalty is to be paid in cash, the lessee shall deduct from royalty payments to the local receiver the amount of the rental paid for that year from the first royalty due, until the accrued royalty equals the annual rental paid.
3. If the royalty is to be paid partly in crude oil and partly in cash, the entire deduction necessary to offset the rental paid shall be taken from the first accrued cash royalty only.
4. If the royalty is to be paid in kind only, the lessee shall deduct from the first accrued royalty product such quantity thereof as will, at the approved selling price on the date of deduction, equal in value the cash rental paid for that year.
5. The date, amount, and character of the deduction made to offset rental payments must be shown in the itemized monthly statement required in the lease covering the month when the deduction is made.

Very respectfully,

William Spry, *Commissioner.*

Approved December 8, 1921.

F. M. Goodwin, *Assistant Secretary.*

Circular No. 811

ACCOUNTS: LESSEES OF OIL LANDS NOT REQUIRED TO FURNISH ITEMIZED STATEMENTS WITH PAYMENTS OF ROYALTIES

Department of the Interior,
General Land Office,
Washington, February 20, 1922.

Registers and Receivers, United States Land Offices.

Sirs: By order, dated March 2, 1921, it is required that all payments of royalty in money shall be accompanied by a statement showing the production for the month, number of wells from which production was made, grade of oil produced, the value thereof, and the royalty due the Government.

The Bureau of Mines advises that its field offices are now established and that the employees in these offices are now computing the royalty statements. Oil and gas lessees are required to submit to such field offices itemized statements of the oil and gas produced by them, which results in their submitting two sets of figures. As the Bureau of Mines is furnishing this office with monthly statements of royalty due the Government from each lease, you will notify lessees that send in itemized royalty statements that such statements are no longer necessary and that all royalty statements should be submitted directly to the deputy supervisor of the Bureau of Mines.

Order of March 2, 1921, is modified accordingly.

Very respectfully,

William Spry, *Commissioner.*

Approved February 20, 1922.

E. C. Finney,
First Assistant Secretary.

[Reported, 48 L. D. 628]

OIL-PROSPECTING PERMITS IN POWER-SITE RESERVES—SUBDIVISION 10 OF PERMIT FORM, MODIFIED

Instructions

Department of the Interior,
Washington, D. C., April 7, 1922.

The Commissioner of the General Land Office:

On August 30, 1921, you submitted application for oil and gas prospecting permit, Salt Lake City 028589, filed by Alvina L. Kamen, involving lands withdrawn for power site purposes, recommending that the permit be issued on the standard form, without reference to proposed amendment thereto suggested by the Federal Power Commission.

I now transmit herewith for your information a copy of the opinion of the solicitor, dated September 30, 1921 (48 L. D. 459), and approved by the Secretary, holding that the sole authority to determine what, if any, provisions should be inserted in a prospecting permit or lease affecting power site lands, rests with the Secretary of the Interior.

In accordance with the suggestion of the solicitor, on the last page of his opinion, in all permits involving power-site lands you will add to subdivision 10 of the permit form the following:

> He further agrees that in the event of discovery of oil or gas within the permit area appropriate conditions for the protection of the power development and use may be incorporated in any lease or leases to be issued to him or his successors.

Kamen's permit is returned for action in accordance with the above.

E. C. Finney,
First Assistant Secretary.

(Copy of the opinion of the solicitor omitted.)

[Reported, 49 L. D. 459]

Circular No. 874

MODIFICATIONS OF RULE 4, CIRCULAR NO. 795, RELATIVE TO REFUNDING PREPAID RENTALS ON OIL AND GAS LANDS

Department of the Interior,
General Land Office,
Washington, D. C., February 24, 1923.

Registers and Receivers, United States Land Offices.

Sirs: For the convenience of lessees of oil and gas lands and to avoid the confusion resulting from the present practice of deducting from royalty paid in kind such quantity thereof as will equal in value the cash rental paid in advance, rule 4 of Circular No. 795, dated December 8, 1921, is hereby modified to read as follows:

> 4. If the royalty is to be paid in kind only, the lessee shall deduct from the first accrued royalty product such quantity thereof as will, at the approved selling price on the date of deduction, equal in value the cash rental paid for that year: *Provided, however,* That by consent of the lessee the amount of annual rental paid in any one year may, in lieu of being refunded in oil, continue to be held by the Government as a deposit through succeeding years subject to correction if the acreage of the lease shall change or to refund any amount due when the lease shall terminate.

Very respectfully,

William Spry, *Commissioner.*

Approved February 24, 1923.

E. C. Finney,
First Assistant Secretary.

[Reported, 49 L. D. 467]

Circular No. 876

INSTRUCTIONS ON OIL AND GAS PERMITS AND LEASES ON LANDS SOUTH OF MEDIAL LINE OF RED RIVER IN OKLAHOMA

Department of the Interior,
General Land Office,
Washington, March 7, 1923.

Register and Receiver, Guthrie, Okla.

Sirs: Your attention is called to the provisions of the act of Congress approved March 4, 1923 (42 Stats. 1448), entitled "An act to authorize the Secretary of the Interior to issue to certain persons and certain corporations permits to explore, or leases of, certain lands that lie south of the medial line of the main channel of Red River, in Oklahoma, and for other purposes." A copy of the act is appended.

The Regulations Concerning Oil and Gas Permits and Leases, as amended to October 29, 1920, Circular No. 672 (47 L. D. 437), contains the departmental instructions under the act of February 25, 1920 (41 Stat. 437), and they are hereby extended to the act of March 4, 1923, so far as applicable. Attention is called to the fact that not more than 160 acres may be granted by lease or permit to any one person or corporation, except where two or more claims have been assigned to one person or corporation, in which event the assignee is limited to the amount of his assigned interests, but not to exceed 640 acres. The following supplementary instructions are issued:

1. The application for an oil and gas prospecting permit or for a lease must be filed in the United States land office at Guthrie, Okla., between the opening hour of March 5, 1923, and the closing hour of May 3, 1923. The application must be made under oath and the supporting papers certified or under oath as far as necessary and

practicable. They should specifically include the following, and such additional matter as may be of assistance in establishing the right to relief:

A. Application:

(*a*) Applicant's name and headquarters address.

(*b*) Proof of citizenship of applicant, by affidavit of such fact, if native born; or if naturalized, by a certified copy of the certificate of naturalization on the form provided for use in public land matters, unless such a copy is already on file; if a corporation, by certified copy of articles of incorporation.

(*c*) Whether the application is for a permit to prospect for oil and gas, or is for a lease based on a substantial discovery of oil or gas.

(*d*) Exact description of the land applied for and the acreage thereof. If the land is not embraced within the plat of an official survey, its boundaries must be located by an accurate, instrumental, metes-and-bounds, closed survey, a point of which must be connected with an established corner of the approved public-land survey fronting on the left bank of Red River, in Oklahoma. A diagram of each river-bed location will be laid down upon a copy of the official "Map of Disposals of Lands Bordering Red River," which will be furnished for the purpose.

(*e*) The respective interests and the nature and extent thereof, of the applicant and all who claim with or through him.

(*f*) A full statement of the facts and a historical résumé of the origin and basis of the claim for relief, and of the chain of title under which it is asserted. It must be specifically shown on what date the applicant or his predecessor in interest initiated the rights upon which the claim for relief is based and the full circumstances of such initiation.

(*g*) A statement of any litigation that the land may be involved in, and of all adverse claims being asserted for the land or its production.

(*h*) An itemization and description of all improvements made by the applicant or his predecessor in interest and the dates during which they were made, together with a map or sketch showing their location. Full details of the nature, extent, and date of any discovery of oil or gas must be shown.

(*i*) Statement of all interests being held or applied for under this act by each applicant.

(*j*) Agreement to permit the inspection or to furnish copies of all records having a bearing on the application.

B. Detailed statement by months of all past production up to date of filing the application, giving value of the production and to whom disposed.

C. An unconditional quitclaim deed to the United States of the involved land from the applicants and the claimants of record.

D. Authority of any representative of an individual or corporation to act.

E. A certified stocklist, if the application is made by an association or corporation, showing name and address and number of shares of each stockholder, together with a statement as to the citizenship of the stockholders. The stocklist will be retained in the confidential files.

F. A certified abstract of title brought down to the date of the application, which must be filed within 30 days after application.

The application (A) and the supporting papers (B to D, inclusive) must be filed in duplicate. Only one copy of the stock list and the abstract of title should be filed. A bond for the protection of the oil strata or deposits against improper methods of drilling and operation need not be filed at time of making the application for a permit or lease.

2. Applications, so far as possible, should be prepared from the viewpoint that lease or permit, if issued, will be granted to the claimants of record; if any of these are not brought into the application, their absence must be explained and the fullest evidence presented that they can not be brought into the application. Protests will be received at any time up to the issuance of permits or leases, but neither a protest nor a notice of intention to make application can be used as the basis of an application. A full and formal application as indicated under paragraph A above must be filed within the stated 60-day period, but the supporting papers may be filed within a reasonable time thereafter if proper reasons for the delay are shown.

3. Applicants should note that under the terms of the act the following conditions are necessary to the issuance of a permit or lease:

(*a*) That the title to the oil and gas is in the United States.

(*b*) That the lands lie south of the medial line of the main channel of Red River, Okla.

(*c*) That the lands were claimed and possessed by the applicant or his predecessor in interest prior to February 25, 1920.

(*d*) That such claim and possession prior to February 25, 1920, was in good faith.

(*e*) That expenditures were made upon the land and with reasonable diligence in an effort to discover or to develop oil or gas.

4. The act states " That after the adjudication and disposition of all applications under this act any lands and deposits remaining unappropriated and undisposed of shall, after date fixed by order of the Secretary of the Interior, be disposed of in accordance with the provisions of said act of February 25, 1920." Due notice in accordance therewith will be given at the proper time, but until such notice is given no application can be received under said act of February 25, 1920, nor will any rights be acquired by any occupation prior to the announced date.

William Spry, *Commissioner.*

Approved.

Hubert Work, *Secretary.*

(Act omitted.)

[Reported, 50 L. D. 155]

CIRCULAR No. 905

INSTRUCTIONS RELATIVE TO IDENTIFICATION OF LANDS IN ALASKA; AMENDING CIRCULARS NOS. 672 AND 845

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 15, 1923.

Registers and Receivers, United States Land Offices in Alaska.

GENTLEMEN: Owing to the difficulties encountered in the adjustment of conflicting claims for oil-prospecting permits under the leasing act of February 25, 1920 (41 Stat. 437), for unsurveyed land in Alaska, section 4 (d) of the regulations of March 11, 1920 (47 L. D. 437), Circular No. 672 and section 2 (c) of Circular No. 845, approved August 12, 1922 (49 L. D. 207), are modified to make the following requirements:

WHERE PERMITS HAVE NOT ISSUED

1. All applicants must hereafter describe lands with reference to true cardinal directions and in cases where applications have heretofore been made and can be conformed to such directions without prejudice to valid intervening claims said applications must be amended to conform to true cardinal directions.

2. In order to permit adjustment of conflicts the claims of all conflicting applicants must be identified with reference to a common monument which can be definitely ascertained and located upon the records and plats in this office.

These conflicting claims fall into two general classes: (*a*) Those involving lands located in the vicinity of the public-land surveys; (*b*) those involving lands which are removed from such surveys.

The following regulations are prescribed for the designation of these lands in applications for prospecting permit:

(*a*) In all cases where circumstances permit, applicants for prospecting permits for unsurveyed lands must describe the lands applied for by metes and bounds connecting such description by courses and distances to some monument of an approved public-land survey.

The point of reference utilized may be the initial monument erected by another applicant who has described said monument by courses and distances with reference to a public-survey monument, provided the location of said monument has been definitely established with reference to the public-land survey. In such case, however, the location of the adopted monument, with respect to such public-land survey monument, must be stated or the field notes or calculations by which the location of the applicant's initial monument with reference to the public-survey monument was obtained, must be furnished.

(b) In cases where there are no available public-land survey monuments the applicant for permit must describe the land by metes and bounds designating the location of his initial monument by courses and distances, with reference to such permanent monuments as will enable this office to identify its location from its records and maps. A plat or chart illustrating the location of said monument will aid in a determination of its location.

3. An applicant for permit must state, under oath, whether his application is for any lands described in any prior application, or in any notice posted on the ground within six months prior to the date of the filing of his application.

In the event that there are any prior conflicting claims for permits the applicant initiating the subsequent claim must describe the land desired with reference to the initial monuments of each prior claimant.

WHERE PERMITS HAVE ISSUED

4. Numerous permits have been issued for unsurveyed land in cases where the department could not determine whether conflicting claims existed, or the extent of apparent conflicts, upon the following conditions:

> This permit is granted upon the express condition that the permittee will adjust any conflict with any prior applicant within six months from date hereof.

In numerous instances where conflicts have apparently existed the permittees have failed to comply with this condition. Any extension of time for beginning or completing drilling operations, granted pursuant to the act of January 11, 1922 (42 Stat. 356), does not extend the time for compliance with the foregoing condition and these permits are subject to cancellation for default in this respect.

5. All permittees who have received permits upon the foregoing conditions and are in default must, within 90 days from receipt of notice, submit:

(*a*) Their affidavits that there are no conflicting claims initiated simultaneously with, or prior to, their initiation of a claim to a permit, and where this office has stated that such conflicts apparently existed, they must furnish amended descriptions locating the claim with reference to the initial monuments of the prior claimants, clearly indicating that such conflicts do not exist; or

(*b*) Their affidavits showing an adjustment of these conflicts or such effort as was made to procure one, which must be accompanied by such amended descriptions with reference to the initial monuments of the prior conflicting claimants as will enable this office to make such final adjudication of rights as the facts may warrant.

(*c*) In the case of conflicting claims simultaneously initiated the claimants must furnish a description with reference to a public survey monument if possible, but if no such monument is available the parties must furnish amended descriptions with reference to a common monument.

6. Failure of the permittees to comply with the requirements of the preceding section shall constitute proper grounds for the cancellation of their permits without further notice from this office.

7. You will examine all applications for prospecting permits and require compliance with sections 1 and 2 hereof, within 90 days from notice, in cases where such applications do not comply therewith,

transmitting said applications in due course with a report as to the action taken. These regulations will be given the widest publicity possible without cost to the Government.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved October 15, 1923.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 50 L. D 338]

CIRCULAR No. 925

POTASH REGULATIONS AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 29, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: March 25, 1924, the First Assistant Secretary of the Interior amended Circular No. 594 of March 21, 1918 (46 L. D. 323), governing permits and leases for potassium, under the act of October 2, 1917 (40 Stat. 297), as amended by Circular No. 781 of October 10, 1921 (48 L. D. 221).

Section 2a of the lease form, Circular No. 594, is amended as follows:

> To invest ______ dollars within four years from the date hereof, not less than one-fourth thereof to be expended during each of said four years, in the substantial development and production of the deposits of potassium and other minerals in the land above described, or in the reduction, manufacture, and preparation of such mineral products for market. Such development, reduction works, or other improvements for which said investment and expenditures are to be made shall, subject to agreed modifications to meet future conditions, in general, consist of the following:

A new paragraph, 10a, is added to said Circular No. 594 as follows:

> 10a. The lessee shall furnish a bond, with approved corporate surety or with two qualified individual sureties, in the sum of one-tenth of the proposed investment, but in no case less than $2,500, conditioned upon the expenditure of the specified amount of investment. After the required investment has been made, a bond in a like amount, with approved corporate surety, conditioned upon compliance with the terms of the lease, will be required. With bonds signed by individual sureties must be filed affidavits of justification by the sureties that each is worth double the sum specified in the undertaking over and above his just debts and liabilities in real property exempt from execution, and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster, as to the identity, signatures, and financial competency of the sureties. All bonds will be examined from time to time as to their sufficiency, and additional security will be required whenever deemed necessary.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 50 L. D. 387]

CIRCULAR No. 929[21]

NOTATION OF CANCELLATION OF OIL AND GAS PERMITS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 23, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Owing to the many complaints of the operation of the present rule as to the noting of the cancellation of the oil and gas permits on the tract books of your offices in order that other applications may be received for the same land and in the interest of good administration and equal rights to all, the following administrative rule is adopted:

Hereafter the cancellation of an oil and gas permit will be made effective on a certain date, (probably 20 days from the date of the letter of this office taking such action), when the cancellation will be noted on the tract books of the local land office at 10 o'clock a. m. Applications for the land may be filed personally or by mail between the hours of 9 a. m. and 10 a. m. of the day of cancellation becomes effective, and all applications so filed will be treated as having been filed at 10 a. m., and in case of conflict will be disposed of by a drawing held publicly by you at 2 p. m. on the same day.

Letters of this office canceling the oil and gas permits will name the date when cancellation becomes effective and will state the hour when applications may be filed as indicated in the preceding paragraph.

A carbon copy of such letter should immediately upon its receipt be posted in your office as notice to the public. The drawing should be conducted in such a manner that no valid criticism can or may be made as to its fairness.

Circular No. 915, dated February 5, 1924, is accordingly modified as to oil and gas prospecting permits.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 23, 1924.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 50 L. D. 400]

CIRCULAR No. 932

RIGHTS OF SETTLERS TO MINERAL DEPOSITS PURSUANT TO OIL LEASING ACT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 28, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: In a recent decision the department held that a settler upon the public domain prior to the passage of the leasing act, where the lands involved were not at time of settlement withdrawn or classified as valuable for oil and gas deposits, is entitled under certain conditions to a preference right to a permit to prospect for oil and gas, pursuant to section 20 of the leasing act, for the lands settled upon.

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[21] Amended by Circulars Nos. 939, p. 929; 966, p. 931; 979, p. 189; and 1084, p. 939.

The following statements and regulations are hereby made to govern future action in cases of this kind:

1. No preference right can be accorded a settler who made his settlement on or after February 25, 1920 (see Charles R. Haupt, 48 L. D. 355), nor to one whose settlement was for lands withdrawn or classified as valuable for oil or gas deposits.

2. In order to be entitled to a preference right, the settler must have, at the time the lands were withdrawn, classified or reported as valuable for oil or gas, done everything possible under the nonmineral land laws toward making entry. If the lands were subject to entry at that time and were not entered by him, the settler does not acquire any preference by later making application to enter said lands. Ada Fletcher (49 L. D. 204).

3. A preference right may be exercised by a settler on lands subject to settlement although he has not made entry, if said failure is due to the fact that the lands are not open to entry under the homestead laws. In such case he will upon the withdrawal, classification, or report that the lands are valuable for minerals, be required to file an election to make entry, when the lands become subject thereto, with a reservation of the oil and gas deposits to the United States in accordance with the act of July 17, 1914 (38 Stat. 509).

4. In cases where the prospective oil and gas value of unsurveyed lands, or lands suspended for survey upon which there is a valid settlement, is brought to the attention of the Land Department by an applicant for a permit under section 13 of the leasing act, the procedure directed in section 12 (*c*) of the leasing regulations, approved March 11, 1920 (47 L. D. 437), will be followed and the mineral waiver above described will be required. Newton *v.* Flesher (unreported), decided March 31, 1922, and departmental letter dated December 7, 1922, in re Flora A. Kable.

5. Every applicant for permit for unsurveyed lands, or lands which though subject to settlement are not subject to entry, must state in his application or show by affidavit of a credible witness, that there are no settlers upon the land, or if there be settlers, give the name and post-office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions, if unsurveyed. Upon receipt of an application which shows that there are settlers on the land included therein you will serve notice by registered mail on each settler that an application for permit has been filed and allow him 30 days from notice within which to file a full statement of the facts of his settlement claim and any objection he has to the issuance of the permit, and to state whether he will claim a preference right to a permit to prospect the land if he be found entitled thereto. If no objection be filed in response to such notice, the application for permit will be considered without regard to the claim of such settler, except that a bond will be required in proper cases as security for damage to the settler's crops and improvements. Such settler will be required, when he makes entry for

the land, to file consent to a reservation of the oil and gas to the United States, unless the permit has been canceled.

If the settler files objection to the issuance of the permit and shows that he has a valid settlement claim, the procedure will be as follows:

a. If the lands have not been withdrawn or classified as valuable for oil and gas deposits, the General Land Office will proceed as indicated in section 4 of these regulations.

b. If, however, the lands have already been withdrawn or classified as mineral, the General Land Office will proceed in accordance with section 3 hereof.

6. Where settlement has preceded the filing of an application for a prospecting permit, and no preference right is claimed or exists in the settler, the applicant for permit will be required to furnish a bond in the sum of $2,000 as security for damage to his crops and improvements, as in the case of applications or entries made pursuant to the act of July 17, 1914 (38 Stat. 509).

7. Any permits issued pursuant to representations by the applicants that there are no settlers on the land are and will be issued subject to the rights of any settlers upon the land at the time the application was filed, and the claims of said settlers are hereby declared to be of the class covered by the term "valid rights" in the general excepting clause in each permit, which reads "valid rights existing at the date of this permit will not be affected hereby."

You will examine all applications hereafter presented and require compliance with the requirements hereof during the 30-day period of suspension prescribed in section 4 of the general regulations approved March 11, 1920, Circular No. 672. (47 L. D. 437.)

Please secure the widest publicity possible, without expense to the Government, for these regulations.

Respectfully,

William Spry, *Commissioner.*

Approved April 28, 1924.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 503]

Circular No. 936

PHOSPHATE REGULATIONS AMENDED

Department of the Interior,
General Land Office,
Washington, May 23, 1924.

Registers and Receivers, United States Land Offices.

Gentlemen: In departmental decision of May 3, 1924, in the case of Reginald C. Willis, Missoula 09035, paragraphs 4 and 5 of the regulations concerning phosphate leases and use permits, under the act of February 25, 1920 (41 Stat. 437), contained in Circular No. 696, were amended to read as follows:

4. *Minimum development.*—(*a*) An actual bona fide expenditure for mine operations, development, or improvement purposes of the amount determined by the Secretary of the Interior will be a condition in each lease as the minimum basis on which each lease will be granted, with the requirement that not less than one-third of such proposed investment shall be expended in development of the mine during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years.

(*b*) Where, however, the lands involved are in an unproven territory, the portion of the total minimum investment required to be made during the first few years of the lease will be fixed in such amounts as the circumstances in each case require.

(*c*) A bond in the sum of $5,000 executed by the lessee with approved corporate surety and conditioned upon the making of the minimum investment required and upon compliance with the terms of the lease will be required.

Section 5 of the regulations is amended by the addition of the following:

But in a case where the lands are in an unproven territory, the minimum production requirement may be made to begin at such time and to run for such periods as the Secretary may find warranted.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved May 23, 1924.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 50 L. D. 509]

CIRCULAR NO. 939 [22]

AMENDMENT OF CIRCULAR NO. 929—RELATING TO NOTATION OF CANCELLATION OF OIL AND GAS PERMITS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 28, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: The second paragraph of Circular No. 929, dated April 23, 1924, relating to filing oil and gas applications for lands embraced in a canceled permit, is hereby amended by adding thereto the following:

However, where application is filed by the former permittee, such application must be accompanied by an agreement to furnish bond in the sum of $1,000, conditioned as security that drilling operations will be commenced within six months from the date of issuance of said permit and for compliance with the remaining drilling requirements of such permit. This bond is to be in addition to the bond required by the regulations in other cases. In case the former permittee is successful at the drawing, his application and that of the party next in order in the drawing will be suspended for 15 days, within which time the bond herein required must be furnished by the successful applicant. In case he fails to furnish said additional bond within this period, his application will be rejected, and that of the remaining applicant forwarded for consideration in due course.

Where it appears that the former permittee has associated himself with others who are successful in the drawing, or is a stockholder in a corporation which acquires priorities at the drawing, such fact will not require the suspension of said application, nor the furnishing of a bond as above required, although such requirement may be made by this office where it appears that the control of the permit will be in the hands of the former permittee.

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[22] Amended by Circular 966, p. 931.

Attach a copy hereof to all copies of Circular No. 929 you may have.

Very respectfully,

William Spry, *Commissioner.*

Approved May 28, 1924.

E. C. Finney,
First Assistant Secretary.

Circular No. 960

ASSIGNMENT OF PARTICULAR TRACT IN OIL AND GAS LEASE TO BE GIVEN NEW SERIAL NUMBER

Department of the Interior,
General Land Office,
Washington, August 19, 1924.

Registers and Receivers, United States Land Offices.

Sirs: Where an assignment is made of a part of the area described in an oil and gas lease, and said assignment is approved by the Secretary of the Interior, the assignee becomes a lessee of the Government as to the tract described and is bound by the terms of the lease the same as though he had obtained the lease to the said land through an application filed in his own name.

For the above reason it has been deemed advisable, in order that the production on the land segregated by the assignment may be properly accounted for, as well as the rental to be paid by the assignee on the particular tract assigned, to consider the assignment, after it approval by the Secretary of the Interior, as the basis of a new case on which a new serial number will be given. In each such case you will be notified by this office when the assignment is approved by the Secretary of the Interior, and directed to assign a current serial number thereto, advising this office of such number by special letter. Reference will be made on your serial register under the original lease number to the number given the assignment as well as a cross reference on the assignment number to the original lease number.

All assignments filed in your office will be transmitted promptly under the serial number of the original lease, and no number will be given to the assignment until such action is directed by this office. Should the assignment cover part of land received by the assignor through a prior assignment in transmitting same to this office you will refer to serial number given by your office to the prior assignment.

Very respectfully,

Geo. R. Wickham,
Acting Commissioner.

Approved August 19, 1924.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 669]

CIRCULAR No. 966

INSTRUCTIONS UNDER CIRCULARS NO. 929 AND NO. 939

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 13, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Referring to Circular No. 929, entitled "Notation of Cancellation of Oil and Gas Permits," approved April 23, 1924, and amended Circular No. 939, approved May 28, 1924, you are further instructed as follows:

1. Where the cancellation of more than one permit becomes effective on the same day the land will be opened to applications for permits without regard to the particular areas embraced in each of the canceled permits; and where, in such cases, drawings are required, all allowable applications filed within the prescribed time for the areas opened should be included in a single drawing.

2. Where drawings are held you will follow the procedure laid down by paragraph 4 of circular of May 22, 1914 (43 L. D. 254). You will issue your official receipt for the fees paid by each applicant but apply only the fees paid by the successful applicants, returning by your official check the fees paid by the unsuccessful applicants, noting on the abstract of moneys returned or applied, opposite the check number, the word "drawing." Also note on the oil and gas applications the word "drawing" and the date, amount, and number of the check.

At the completion of a drawing furnish this office a list of the applications involved therein, showing: (1) date of drawing, (2) description of the land involved, (3) names of successful applicants and serial numbers of applications, and (4) names of unsuccessful applicants and serial numbers of their applications.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved November 13, 1924.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 138]

CIRCULAR No. 1004[23]

ACCOUNTS: FEES UNDER ACT OF FEBRUARY 25, 1920

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 2, 1925.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Hereafter fees paid with applications for permits, leases, or other rights under the mineral leasing act of February 25,

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[23] See Circular No. 1158, p. 968.

1920 (41 Stat. 437), shall not be applied until receipt of notice from this office that the application has been allowed. Pending the allowance or rejection of an application, the fee will be held as "Unearned moneys." All instructions inconsistent herewith are hereby modified accordingly.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved May 2, 1925.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 196]

ISSUANCE OF OIL AND GAS PROSPECTING PERMITS FOR LANDS IN THE PLACE LIMITS OF RAILROAD GRANTS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, September 17, 1925.

FINNEY, *First Assistant Secretary:*

Reference is had to an appeal by the Southern Pacific Railroad Co., pending in your (Commissioner of the General Land Office) office from action by the register and receiver at Los Angeles, California, in rejecting the company's listing September 28, 1922, of sec. 3, T. 11 N., R. 3 E., S. B. M., California, for the reason that this department had previously granted a permit covering the land, under the provisions of the act of February 25, 1920 (41 Stat. 437), to prospect for oil and gas therein.

Calling attention to that proceeding you request instructions on the general question as to whether permits may be lawfully issued under said act to prospect upon unpatented odd-numbered sections within the place limits of certain railroad grants.

In view of the importance of the question involved, I referred the matter to the Attorney General for an opinion, which was given August 29, 1925. His opinion concludes:

> I am therefore of the opinion, and so advise you, that your department has the right and authority to issue oil prospecting permits under the act of February 25, 1920 (41 Stat. 437), for lands within the primary limits of grants to railroads, which lands, if nonmineral and not otherwise appropriated or reserved at the date of the grant, were granted to the railroads.

This department will be governed by the conclusions reached by the Attorney General, and you are authorized and instructed to proceed in accordance with his opinion in disposing of cases of the class described therein.

Any application to prospect such lands will be handled administratively as near as may be as provided in paragraph 12 (*c*) of subsisting oil and gas regulations as of land covered by nonmineral entry within mineral reservation. It will be referred to the Geological Survey for classification as to prospective oil and gas values. If the Geological Survey reports that the land is without such value, the application will be rejected. If the Survey reports that it has such value and affords a favorable opportunity for prospecting, the railroad company will be so notified and required to file consent to a mineral reservation or to show cause why such reservation should not be made.[24] The decision of this department of January 31, 1922, in *Northern Pacific Railway Co.* (48 L. D. 573), is hereby overruled, in so far as it holds that a railroad company is not entitled to the benefits of the act of July 17, 1914 (38 Stat. 509). But no railroad company or person claiming land under a railroad land grant shall be entitled to a preference right to a permit and lease under the act of February 25, 1920. See section 20 of said act.

[Reported, 51 L. D. 219]

PROCEDURE RELATING TO THE ADMINISTRATION OF THE MINERAL LEASING LAWS—GENERAL LAND OFFICE AND GEOLOGICAL SURVEY

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, D. C., September 22, 1925.

The COMMISSIONER OF THE GENERAL LAND OFFICE:
The DIRECTOR OF THE GEOLOGICAL SURVEY:

The following outline of procedure under the mineral leasing laws is promulgated for your guidance, in view of the additional functions, duties, power, and authority vested in the Geological Survey, pursuant to departmental order No. 54, dated June 25, 1925, issued in conformity with the exceptions noted in Executive order of June 4, 1925.

1. Prior to the issuance of prospecting permits, leases, licenses, or patents under the mineral leasing laws, the General Land Office will refer to the Geological Survey for report the following described applications, submitting for each phosphate, coal, and oil-shale application a plat showing status of mineral deposits in and adjacent to the area applied for:

(*a*) Coal prospecting permits, leases, and licenses.
(*b*) Potash prospecting permits, patents, and leases.
(*c*) Sodium prospecting permits and leases.
(*d*) Phosphate leases.
(*e*) Oil-shale leases.
(*f*) Oil and gas permits and leases.

With respect to such applications the Geological Survey will report on prospecting permits, other than for oil and gas, as to whether prospecting is necessary; on all leases, as to the leasing area, the rate of royalty, and, where necessary, the investment and production terms, discovery, and any other matters affecting the issuance of and operations under the lease; on licenses, as to whether the license should be issued; and on potash patent, as to the adequacy of the alleged discovery. Reports on oil and gas prospecting permit applications will be as to (*a*) relations to geologic structures of producing oil and gas fields, (*b*) as to other applications and interests of the same applicant on the same structure or on different structures in the same State or Territory, and (*c*) when necessary, as to prospective oil and gas value under paragraph 12 (*c*), Circular No. 672 (47 L. D. 437).

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[24] Railroad should not be required to file consent to mineral reservation, as to lands within primary limits, but should be required to show cause why permit should not issue. Departmental decision of Nov. 9, 1926, A–9127, Billings 021068.

2. Subsequent to the issuance of prospecting permits, leases, and licenses under the mineral leasing laws, the General Land Office will refer to the Geological Survey for report, or submit recommendations to the Secretary through the Geological Survey and for its concurrence all applications for:

(*a*) Amendments, modifications, and consolidations.
(*b*) Cancellations other than oil and gas prospecting permits.
(*c*) Relinquishments.
(*d*) Assignments.
(*e*) Renewals.
(*f*) Working agreements.
(*g*) Reduction or cancellation of bonds.
(*h*) Relief.
(*i*) Sales contracts.

The Geological Survey will, upon receipt of such requests, make appropriate report or indicate its concurrence.

In oil and gas prospecting permit cases subject to cancellation the Geological Survey, on request of the General Land Office, will report as to whether any well is being drilled or has been completed on the geologic structures involving the land and whether the land may be opened to further prospecting or whether it should be held for lease.

3. Letters prepared by the General Land Office for the approval or signature of the Secretary, defining the conditions to be imposed under the mineral leasing laws or any requirements affecting the administration thereof, will be transmitted through the Geological Survey for concurrence. The Geological Survey will indicate its concurrence and forward the record to the Secretary or, if not in accord with the proposed action, and agreement can not be reached informally between the two offices, the Survey will forward the record to the Secretary with a statement of its views.

After action has been taken by the Secretary, copies of such General Land Office and departmental letters will be forwarded by the General Land Office to the Geological Survey for its files.

4. The General Land Office will forward to the Geological Survey the case record in appeals from decisions where the action of the General Land Office is based primarily on the report of the Geological Survey and that office will either report to the Secretary or return the case record with recommendation.

5. The General Land Office will promptly notify the Geological Survey of the award of each lease, will forward to the Geological Survey the small card record of approval of permits and leases, and will furnish for the files of the Geological Survey a copy of each permit, lease, license, and contract, together with copies of all material correspondence thereafter conducted by the General Land Office relative to past and future production, amount, rate and payment of royalty, the payment of rentals, assignments, extensions of time, cancellations, relief, agreements, and information regarding the administration of the permit, lease, or license.

6. The Geological Survey will submit to the General Land Office monthly statements setting forth the oil and gas royalties due and payable or delivered in kind, and will submit quarterly statements of the royalties and rentals due and payable for all other minerals covered by the leasing laws and after the termination of each lease and coal permit and license, a final report will be made to the General Land Office by the Geological Survey.

7. The Geological Survey will refer to the General Land Office all matters regarding the appropriate surface marking of leases and permits, the underground marking of boundaries of leases in mining operations, and the tying in of mine openings with corners of the public land surveys.

8. Such additional references, reports, and interchange of information and advice shall be made by or between the General Land Office and Geological Survey as may be necessary to perpetuate or improve current practice and to accomplish economical and effective administration of the mineral leasing laws, it being the intent that under the direction of the Secretary of the Interior, the General Land Office shall be the office of record, law, and collections in mineral leasing matters while the Geological Survey shall furnish scientific or technical information and advise, supervise prospecting and mining operations, record production, and determine royalties and rentals.

E. C. Finney, *Acting Secretary.*

[Reported, 51 L. D. 239]

Circular 1036 [25]

INSTRUCTIONS UNDER THE OIL AND GAS LEASING ACT—PARAGRAPH 4 (c) OF CIRCULAR NO. 672, AMENDED

Department of the Interior,
General Land Office,
Washington, October 16, 1925.

Registers, United States Land Offices.

Gentlemen: The department has decided that no person can under the law be allowed to have more than three proceedings, being, or having originated in, applications for permits under section 13 of the leasing act, pending or subsisting at the same time for lands in one State, and in order that applicants for oil and gas permits may show their qualifications as so determined, paragraph 4 (*c*) Circular No. 672 (47 L. D. 437) is hereby amended so as to read:

> (*c*) A statement that the applicant is not the holder of, nor has pending applications for, more than two other oil and gas permits in the same State, nor holder of or applicant for any other permit in the same geologic structure, together with a statement of any other applications for permits or permits issued in the same State in which the applicant is directly or indirectly interested, fully disclosing the nature and extent of such interests, is required. In this connection attention is directed to the limitations and exceptions of section 27 of the act.

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[25] See Circulars Nos. 1073, p. 937, and 1129, p. 962.

In all cases where applicants fail to show their qualifications as above indicated, you will allow them 15 days from notice thereof within which to cure the defects; but when an application is filed that shows the applicant disqualified by having three such proceedings pending in the State or one in the same geologic structure, you will reject the same subject to the right of appeal within 15 days from notice thereof.

All instructions or regulations in conflict herewith are hereby amended so as to conform hereto.

You will give the widest publicity to the above regulations that may be possible without expense to the United States.

Very respectfully,

William Spry, *Commissioner.*

Approved October 16, 1925.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 424]

Circular No. 1056

POTASH REGULATIONS AMENDED

Department of the Interior,
General Land Office,
Washington, March 27, 1926.

Registers, United States Land Offices.

Gentlemen: Section 6 of the potash regulations, Circular No. 594, approved March 21, 1918 (46 L. D. 323), under the act of October 2, 1917 (40 Stat. 297), is hereby amended to read:

> (6) The lands in class (B), if containing potash in some or any of the forms specified in said act, will thereupon become subject to lease, with a preferential right of the permittee thereto upon such reasonable royalty as shall be fixed by the Secretary, on condition that the permittee shall apply for lease at the time he applies for patent, else he will be held to have waived his preference right to a lease. If not made the subject of such a preferential lease, such lands may be offered for leasing by publication for a period of 30 days in a newspaper designated by the register of the proper land district, published at the capital of the State, inviting applications therefor, on or before a date specified. Applications for such excess permit lands will be considered without further notice, and leases awarded thereunder in general accordance with the provisions of paragraph 5 herein. Lands once included in a published notice of leasing offer, remaining unleased, may thereafter be applied for without publication of notice.

Very respectfully,

William Spry, *Commissioner.*

Approved March 27, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 475]

Circular No. 1073 [26]

INSTRUCTIONS UNDER THE ACT APPROVED APRIL 30, 1926 (44 STAT. 373), AMENDING SECTION 27 OF THE LEASING ACT OF FEBRUARY 25, 1920 (41 STAT. 437)

Department of the Interior,
General Land Office,
Washington, June 18, 1926.

Registers, United States Land Offices.

Gentlemen: By the act of April 30, 1926 (44 Stat. 373), section 27 of the leasing act of February 25, 1920 (41 Stat. 437), was amended so as to read as follows:

> That no person, association, or corporation, except as herein provided, shall take or hold coal, phosphate, or sodium leases or permits during the life of such leases or permits in any one State exceeding in aggregate acreage 2,560 acres for each of said minerals; no person, association, or corporation shall take or hold at one time oil or gas leases or permits exceeding in the aggregate 7,680 acres granted hereunder in any one State, and not more than 2,560 acres within the geologic structure of the same producing oil or gas field; and no person, association, or corporation shall take or hold at one time any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof, which, together with the area embraced in any direct holding of a lease or leases, permit or permits, under this act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease or leases, permit or permits, under the provisions hereof for any kind of mineral leases hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee or permittee under this act. Any interests held in violation of this act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, That nothing herein contained shall be construed to limit Sections 18, 18a, 19, and 22 or to prevent any number of lessees under the provisions of this act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this act, or the transportation of coal or to increase the acreage which may be acquired or held under Section 17 of this act: *Provided further*, That any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, That if any of the lands or deposits leased under the provisions of this act shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of, or are in anywise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreement or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individuals, partnership, association, corporation, or control, in excess of the amounts of lands provided in this act, the lease thereof shall be forfeited by appropriate court proceedings.

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[26] Amended by Circular No. 1129, p. 962.

In accordance with the provisions of said act, every applicant for coal or sodium permit, or coal, phosphate, or sodium lease must show that, with the area applied for, his or its interest or interests in such permits, leases and other applications therefor, directly and indirectly, will not exceed in the aggregate 2,560 acres for each of said minerals in any one State.

Every applicant for oil or gas permit, lease or for approval of assignment of any interest in such permit or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and other applications therefor, directly and indirectly, will not exceed in the aggregate 7,680 acres in any one State and not more than 2,560 acres within the geologic structure of the same producing oil or gas field, together with a full disclosure, nature and extent of his or its other holdings with identification of the records where such interests may be found.

The act of April 30, 1926, applies to the Territory of Alaska in so far as it allows an applicant to hold direct and indirect interests not exceeding in the aggregate 2,560 acres on the same geologic structure, but such applicant may not take or hold more than five permits and leases within the geologic structure of the same producing oil or gas field, nor more than five in said Territory.

Within the limitations herein stated, assignments of any interest in permits or leases should be submitted for approval, accompanied by the necessary papers and showing of the qualifications of the assignee.

Drilling contracts and operating agreements entered into by holders of prospecting permits should not be submitted for approval unless and until discovery is made and application for lease filed, at which time all such contracts must be disclosed. If the contract carries with it a right or interest in the proceeds or in the permit or lease to be issued thereunder, the contractor must then show his qualifications to take the interest so acquired.

Prior to discovery on oil and gas permits, drilling contracts and operating agreements or copies thereof filed in connection with applications for extensions of time, will usually be considered only for the purpose of determining whether the permittees have exercised diligence and are entitled to the extensions of time applied for.

In computing the area held by any person, association, or corporation, only those interests which are represented in applications for permits, for leases, and for approval of assignments of any interest in permits or leases, and those interests held or recognized in permits or leases granted or assignments approved, will be considered.[27]

All instructions and regulations in conflict herewith are hereby modified so as to conform hereto.

You will give the widest publicity to the above regulations that may be possible without expense to the United States.

Very respectfully,

William Spry, *Commissioner.*

Approved June 18, 1926.

E. C. Finney,
First Assistant Secretary.

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[27] See amendment, p. 962.

[Reported, 51 L. D. 504]

Circular No. 1084

AMENDMENT OF CIRCULAR NO. 929 RELATING TO DRAWINGS UPON CANCELLATION OF OIL AND GAS PERMITS

Department of the Interior,
General Land Office,
Washington, July 23, 1926.

Registers, United States Land Offices.

Gentlemen: On June 3, 1926, in considering a protest filed as the result of a drawing held in accordance with Circular No. 929 (50 L. D. 387), upon the cancellation of an oil and gas prospecting permit the department directed that:

> Hereafter parties desiring to file applications for participation in drawings of this kind be required to allege that they are filing in their own interest and not in the interest of any other person or persons, association, or corporation; or to show clearly in whose interest if not in their own exclusive interest.

It must be stated in each application that the applicant files the same in good faith for his or its own benefit, and not directly or indirectly, in whole or in part in behalf of any other person or persons, association, or corporation, or if made in the interest of any other person or persons, association, or corporation, a full disclosure thereof must be made, accompanied by a showing of the qualifications of all the interested parties. Any such application filed that does not meet the above requirements will not be allowed to participate in the drawings when held.

Any applicant who fails to disclose any and all interests other than his own which shall tend to give an advantage in the drawing, will forfeit any claim to a return or repayment of moneys tendered with his application and subject the permit, in the event that one is awarded to him, to cancellation for fraud.

Circular No. 929 is hereby amended so as to conform hereto.

You will give the widest publicity to the above regulations that may be possible without expense to the United States.

Very respectfully,

William Spry, *Commissioner.*

Approved July 23, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 597]

Circular No. 1094

AMENDMENT OF SECTION 8 OF CIRCULAR NO. 672 RELATIVE TO LEASES AS A REWARD FOR DISCOVERY

Department of the Interior,
General Land Office,
Washington, September 23, 1926.

Registers, United States Land Offices.

Sirs: On August 30, 1926, the department amended section 8 of the regulations concerning oil and gas permits and leases published as Circular No. 672 of the General Land Office to read as follows:

8. *Reward for discovery.*—Upon establishing to the satisfaction of the Secretary of the Interior that compliance has been made with the terms and conditions of the permit and the operating regulations applicable thereto and that valuable deposits of oil or gas have been discovered within the limits of the land embraced in the permit, within the period of the permit or extension thereof, the permittee is entitled (*a*) to a lease of one-fourth of the land included in the permit, on a royalty of 5 per cent, or for at least 160 acres if there be that area in the permit; (*b*) to a preference right to a lease for the remainder of the land covered by his permit at such royalty as may be fixed by the Secretary of the Interior, not less than 12½ per cent in amount or value of the production, nor more than the royalties fixed for leases under section 18 of the act, (sec. 19, par. c, of these regulations), except that on that portion of the average production exceeding 200 barrels per day per well for the calendar month, the royalties shall be 33⅓ per cent for oil of 30° B. or over and 25 per cent for oil of less than 30° B. Application for lease based on a claim of discovery of oil or gas within the limits of land embraced in a permit should set forth in detail the operations that have been conducted and the amount and value of the discovery claimed to have been made; and must include a certificate by the officer of the department empowered to supervise operations under the permit to the effect that the permittee has conducted his prospecting operations in accordance with approved methods and practice and has made satisfactory compliance with the operating regulations; that each and every well drilled on the permit area is in a satisfactory condition, and that the well or wells relied upon for evidence of discovery have been put in condition for operation and thereafter tested adequately for productive capacity.

Very respectfuly,

THOS. C. HAVELL,
Acting Commissioner.

[Reported, 51 L. D. 600]

CIRCULAR NO. 823

(Dated May 5, 1922, reissued with amendments)

INSTRUCTIONS RELATIVE TO APPLICATIONS FOR LEASES BY PERMITTEES UNDER SECTION 14 OF THE ACT OF FEBRUARY 25, 1920

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 1, 1926.

Registers, United States Land Offices.

SIRS: In order to expedite and coordinate the work of the General Land Office and of the Geological Survey in acting upon applications for leases filed under section 14 of the act of February 25, 1920 (41 Stat. 437), by the holders of oil and gas prospecting permits, you are instructed as follows:

Leases following permits.—An application for lease as a reward for discovery by permittees shall be filed in duplicate in the United States Land Office of the district in which the land is situated. The register will immediately transmit the original to the Commissioner of the General Land Office, by special letter, and the duplicate to the supervisor of the Geological Survey having jurisdiction in the district.

Such applications should set out the following items:

1. Serial number of permit.
2. Name and address of permittee.
3. Name and address of operator.

4. Subdivision on which discoveries have been made. Character of discoveries. Exact date of discovery.

5. Number and definite location of each well brought in.

6. Complete itemized production statement by calendar months from first discovery to date of application.

7. The applicant must give description of the land for which he desires a lease at the minimum royalty accorded discoverers under permits. He must also at the same time apply for lease of the remaining lands covered by the permit, or waive claim to his preference right to lease same or such part thereof as he does not desire to lease. A permittee under section 13, and a permittee under section 19 of the act (for lands not within the known geologic structure of a producing oil and gas field at the date the permit application was filed), is entitled to lease one-fourth of the land in the permit, or at least 160 acres, if the permit includes that area, at a flat royalty of 5 per cent. If a permit under section 19 includes areas which were at the date the permit application was filed partly inside and partly outside the known geologic structure of a producing oil and gas field, the permittee is entitled to select one-fourth of the area for lease wholly outside, or wholly inside, or partly inside and partly outside the known structure, provided, however, that the royalty on lands within the known structure shall in no event be less than 12½ per cent, and provided, further, that the permittee is entitled to a lease at 5 per cent flat royalty upon so much of the outside area as does not exceed one-fourth of the total area covered by the permit.

8. A statement of what interests are to be held under the lease, together with (*a*) the necessary contracts, assignments, etc., for the approval of the Secretary of the Interior; (*b*) proof of citizenship of any assignee or interested party by affidavit of such fact if native born, or if naturalized, by certified copy of the certificate of naturalization on the form provided for use in public-land matters unless such copy is already on file, or, if a corporation, by certified copy of the articles of incorporation, and a showing as to the residence and citizenship of its stockholders; (*c*) a statement as to interests held by the assignee or interested party in leases and permits in the geologic structure of the same producing oil or gas field. If the showings required under (*a*) and (*b*) have already been made, a reference thereto may be made giving the land office district and serial number of the case in which the showings were made.

9. A certificate to be furnished by the supervisor in charge of operations to the effect that the permittee has conducted his prospecting operations in accordance with approved methods and practice, and has made satisfactory compliance with the operating regulations, that each and every well operated on the permit area is in a satisfactory condition, and that the well or wells relied upon for discovery have been put in condition for operation and thereafter tested adequately for productive capacity.

Should such a certificate be lacking when an application is filed in your office, you will reject the application and advise the applicant that upon obtaining the certificate a new application for lease may be presented, which application will be given the current date of filing, the purpose of this being to avoid the establishment of a date of application for lease prior to bona fide compliance with the terms and conditions of the permit.

For address list of supervisors of oil and gas operations, see last page of this circular. Applications for certificates may be filed with the supervisor or his local representative.

Relinquishments.—Relinquishments of permits must be accompanied by an affidavit of the permittee giving the facts as to operations under the permit. If no drilling was done, it should be so stated. If drilling has been done, the number of wells drilled, their location and depth, the depth and thickness of oil, gas and water sands, and detailed method of plugging the wells for abandoning them must be stated.

Abandonment of wells.—Upon plugging or abandoning a well drilled under a permit or lease, the casing shall not be drawn from the well until authority has been obtained in writing from the supervisor of the Geological Survey or other authorized agent of the Department of the Interior.

Sales contracts.—Triplicate signed copies of sales contracts submitted for the approval of the Secretary of the Interior under paragraph 2 (*d*) of the lease must be filed with the supervisor of the Geological Survey having jurisdiction of the district in which the leased land is situated. The supervisor will retain one copy for his files and forward the other copies with his report to the Director of the Geological Survey. One copy will then be transmitted for appropriate action to the Commissioner of the General Land Office with recommendation of the Director of the Geological Survey.

If a sales contract is submitted to any official of the Interior Department other than the supervisor without its having been approved by him or other authorized official, the contract should be returned to the person submitting it with instructions to file triplicate signed copies at the office of the local supervisor, who will handle it in the regular manner.

ADDRESS LIST OF SUPERVISORS OF OIL AND GAS OPERATIONS

Pacific district (Arizona, except Indian reservations in northeastern portion, California, Nevada, Oregon, and Washington): Supervisor, oil and gas operations, United States Geological Survey, Taft, Calif.

Mid-continent district (Arkansas, Kansas, Louisiana, and Oklahoma): Supervisor, oil and gas operations, United States Geological Survey, Muskogee, Okla.

Rocky Mountain district (Arizona, including only Indian reservations in northeastern portion, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Wyoming): Supervisor, oil and gas operations, United States Geological Survey, 508 Consolidated Royalty Building, Casper, Wyo.

In the Rocky Mountain district the engineer in charge, oil and gas operations, United States Geological Survey, at each of the following addresses, is a local representative of the supervisor: 312 Electric Building, Billings, Mont.; Shelby, Mont.; Cat Creek, Mont.; Midwest Wyo.; Fort Washakie, Wyo; 212 Custom house, Denver, Colo.; Shiprock, N. Mex.; Federal Building, Roswell, N. Mex.

You will give the widest publicity to the foregoing that may be possible without expense to the United States.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved October 1, 1926.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 602]

CIRCULAR NO. 1099

OIL AND GAS PERMIT APPLICATIONS MADE BY ATTORNEYS IN FACT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 19, 1926.

Registers, United States Land Offices.

SIRS: Under date of September 21, 1926, the Department directed, in connection with applications for oil and gas prospecting permits filed under the act of February 25, 1920 (41 Stat. 437), that—

> From and after November 1, 1926, prospecting permit applications signed by attorneys in fact must be accompanied by powers of attorney and affidavits by the applicants as to their qualifications. Such applications not accompanied by proof of authority and qualifications will be received and rejected, subject to the right to complete or to appeal, but will not be noted on the tract books or plats prior to the filing of powers of attorney and affidavits by the applicants as to their qualifications.

You will, in acting on cases coming under these instructions, allow 15 days in which to cure the defects or to appeal, and in default, transmit the papers to this office as a closed case. If the power of attorney is filed and the land has not in the meantime been appropriated under a proper oil and gas application, you will note the hour and date the application is so completed and hold same suspended for 30 days after completion, at which time you will take action as prescribed in section 4, Circular No. 672 (47 L. D. 437).

Any application presented by agent or attorney in fact which appears to have been executed by the applicant in blank and the land description later filled in by the agent or attorney, should be received and noted filed, and promptly transmitted here for instructions, accompanied by your report of all the facts and circumstances known.

You will give the widest publicity possible for these regulations without expense to the Government.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved October 19, 1926.

E. C. FINNEY,
First Assistant Secretary

[Reported, 51 L. D. 647]

Circular No. 1104

REGULATIONS CONCERNING SULPHUR-MINING LEASES AND PROSPECTING PERMITS IN THE STATE OF LOUISIANA

Department of the Interior,
General Land Office,
Washington, December 22, 1926.

Register, *Baton Rouge, La.*

Sir: The act of Congress approved April 17, 1926 (44 Stat. 301), entitled "An act to promote the production of sulphur upon the public domain within the State of Louisiana," authorizes the Secretary of the Interior to grant prospecting permits and leases for sulphur lands belonging to the United States in that State.

The similarity of this act to the general mineral leasing act of February 25, 1920 (41 Stat. 437), is such that the provisions of Circular No. 672, approved March 11, 1920, relating to oil and gas permits and leases are generally applicable, and to the extent that they are not inconsistent with the said act of April 17, 1926, they will govern the procedure in applications for permits and leases under the latter act.

A sulphur permit may, however, be allowed for a maximum of 640 acres only.

The royalty in sulphur leases granted consequent upon a permit shall be 5 per cent of the quantity or gross value of the output of sulphur at the point of shipment to market.

An oil permittee who shall make a discovery of sulphur in lands covered by his permit shall have the same privilege of obtaining a sulphur lease as is given to a sulphur permittee.

All sulphur leases for lands known to contain valuable deposits of sulphur and not covered by permits or leases shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease and upon the payment in advance of a rental of 50 cents per acre per annum, the rental paid for any one year to be credited against the royalties accruing for that year.

No person, association, or corporation shall take or hold more than three sulphur permits or leases in any one State during the life of such permits or leases.

Very respectfully,

William Spry, *Commissioner.*

Approved December 22, 1926.

E. C. Finney,
First Assistant Secretary.

(Act omitted.)

[Reported, 52 L. D. 20]

CIRCULAR NO. 1107

REGULATIONS CONCERNING LEASES OF GOLD, SILVER, AND QUICKSILVER ON PRIVATE LAND GRANTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 3, 1927.

Registers, United States Land Offices.

GENTLEMEN: The act of Congress approved June 8, 1926 (44 Stat. 710), entitled "An act relating to patents issued pursuant to decrees of the court of private land claims," authorizes the Secretary of the Interior to lease to the grantee, or those claiming through or under him gold, silver, and quicksilver deposits, or mines or minerals of the same, on lands in private land claims patented pursuant to decrees of the court of private land claims with reservation of such minerals or mines.

The following rules and regulations will govern the issuance of such leases:

1. Applications for leases shall be filed in the United States land office of the district in which the lands are situated, by the owner of the land under the patent title; that is, the original grantee or his record transferee or successor in title, and may include all or any part of the grant for which the applicant holds title at the date of the application.

2. Applications shall be under oath, give name and address of the applicant, describe the land in which the deposits occur, by legal subdivisions of the public surveys, if so surveyed, otherwise by metes and bounds, or if for the entire area in the grant, the name of the grant, area, and date of patent will suffice. The mineral deposits must also be fully described, giving character, mode of occurrence, nature of the formation, kind, and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary to successful operation of the mine or mines contemplated, estimated amount of production of gold, silver, and quicksilver, or any of them, and such other pertinent information the applicant may desire to set forth, including what he considers a reasonable royalty rate under the lease. The applicant must also file with his application a duly authenticated abstract of title showing present ownership of the land, or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

3. Any such application filed will be given a current serial number by the register, noted on his records and promptly transmitted to the Commissioner of the General Land Office.

4. When an application is received in the General Land Office it will be considered, and if found sufficient to authorize issuance of lease thereunder, a rate of royalty, not less than 5 per cent nor more than 12½ per cent of the value of the output of gold, silver, or quicksilver at the mine, will be fixed and the amount of investment under the lease will be determined and prescribed by the Secretary of the Interior.

5. When a lease has been authorized, forms of lease in accordance with the terms prescribed will be furnished to the applicant, through the district land office, who will be allowed 30 days from notice within which to execute and return the lease to the district land office and to furnish the required bond.

6. A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

7. Form of lease:

DEPARTMENT OF THE INTERIOR

U. S. land office at ____________.
Serial No. ____.

This indenture of lease entered into, in triplicate, this ____ day of ______, 19__, by and between the United States of America, acting in that behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and ______ ______, of ______ ______, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved June 8, 1926 (44 Stat. 710), entitled "An act relating to patents issued pursuant to decrees of the court of private land claims," which act is made a part thereof.

Witnesseth:

SECTION 1. *Subject.*—That the lessor, in consideration of the royalty to be paid and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine, remove, and dispose of all gold, silver, and quicksilver in, upon, or under the following-described tract or parcel of land, being all or part of the ______ grant, situated in ______ county, State of ______, and more particularly described as follows: ______ ______ ______ ______, containing ____ acres, more or less, for a term of 20 years with the preference right in the lessee to renew the same for successive periods of 10 years each upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of any such period.

SEC. 2. In a consideration of the foregoing the lessee hereby covenants and agrees:

(*a*) *Investment and bond.*—To invest ______ dollars in actual mining development, mining improvements, and mining operations upon the described premises within four years from the date hereof, not less than one-fourth of which shall be expended during each of said years, unless sooner expended and to furnish and maintain a bond in the sum of $2,000 conditioned upon the making of such investment and the full compliance with all the terms and provisions of this lease;

(*b*) *Royalty.*—To pay a royalty of ____ per cent of the net value at the mine of the output of gold, silver, and quicksilver mined from said premises, payable monthly to the register of the United States land office of the district in which the lands are situated, at the end of each month succeeding the extraction of the minerals from the mine or mines;

(*c*) *State taxes.*—To pay when due all taxes assessed and levied under the laws of the State upon the improvements, output of mines, or other rights, property, or assets of the lessee;

(*d*) *Reports.*—To furnish monthly certified statements in detail and in such form as may be prescribed by the lessor, of the amount and value of the output of the gold, silver, and quicksilver from the leased lands; the books, records, and property leased to be subject to inspection at any time by an accredited agent of the lessor;

(*e*) *Assignment.*—Not to assign this lease or any interest therein, nor sublet any of the rights and privileges herein granted without the written consent of the lessor first had and obtained;

(*f*) *Diligence.*—To proceed diligently and within 90 days after the delivery hereof to commence operations to develop a mine of gold, silver, or quicksilver, or any of said minerals, within the area covered by this lease, and to mine and produce same by such approved methods and the use of such appliances as to secure all or as large an amount as practicable of such minerals as may be found in the land, leaving no available minerals abandoned where the mining is being conducted, and to conform to such reasonable requirements as may be made by the lessor as to methods and practices in the mining of such minerals;

(*g*) *Minimum royalty.*—Beginning with the fifth year of the lease, except when such operations shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, the lessee shall each year mine and pay a royalty on not less than ______ dollars in value of the leased minerals, unless the lessee shall pay the royalty on such minimum amount for one year in advance, in which case operations may be suspended for that year.

SEC. 3. *Relinquishment.*—The lessee, upon consent in writing of the lessor, may make written relinquishment of this lease and thereupon be relieved of all future obligations hereunder, upon payment of all royalties due the lessor and of all wages and moneys due and payable to the workmen employed by the lessee, but in no case shall such permission be effective until the lessee shall have made provision for the preservation of any mines that may have been opened hereunder.

SEC. 4. *Forfeiture.*—If the lessee shall make default in any of the terms of this lease and such default shall continue for a period of 60 days after written notice thereof by the Secretary of the Interior, the lessor may by appropriate proceedings have this lease forfeited and canceled in a court of competent jurisdiction, but this provision shall not deprive the lessor of any legal or equitable remedy which the lessor would otherwise have, nor shall a waiver of any particular cause of forfeiture affect the right to proceed against the lessee for any other cause of forfeiture or for the same cause occurring at any other time.

SEC. 5. *Heirs and successors.*—It is further agreed that each obligation hereunder shall extend to and be binding upon and every benefit hereof shall inure to the heirs, executors, administrators, sucessors, or assigns of the respective parties hereof.

SEC. 6. *Unlawful interests.*—It is also further agreed that no Member of or Delegate to Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part of this lease, or derive any benefit that may arise therefrom, and that the provisions of section 3741 of the Revised Statues of the United States and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909, (35 Stat. 1109), relating to contracts, enter into and form a part of this lease, so far as the same may be applicable.

In witness whereof:

THE UNITED STATES OF AMERICA.
By ______ ______,
Secretary of the Interior.

______ ______.
______ ______.
______ ______.

Witnesses:
______ ______.
______ ______.
______ ______.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved January 3, 1927.

E. C. FINNEY,
First Assistant Secretary.

(Act omitted.)

[Reported. 52 L. D. 40]

CIRCULAR NO. 1111[28]

BONDS UNDER OIL AND GAS PROSPECTING PERMITS—SECTION 4 (h), CIRCULAR NO. 672, MODIFIED—DRILLING BONDS, AND CIRCULAR NO. 754 REVOKED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 21, 1927.

Registers, United States Land Offices.

SIRS: Hereafter applicants for oil and gas prospecting permits under the act of February 25, 1920 (41 Stat. 437), will not be required to furnish the bond at the time of filing of the application for the permit, conditioned against failure of the permittee to repair damage to the oil strata or deposits resulting from improper methods of operation, as provided by section 4 (h) of Circular No. 672 (47 L. D. 437), and Circular No. 754. Such applicants, however, will be required, prior to the issuance of permit, to furnish bond in the sum of $1,000, or such other amount as may be fixed, in special cases where a permit application embraces reserved deposits in lands theretofore entered or patented with reservation of the oil and gas to the United States, together with the right to prospect for, mine, and remove the same pursuant to the act of July 17, 1914 (38 Stat. 509), or where the lands constitute a portion of a reclamation project, or are included in a reclamation homestead entry.

Before a permittee, or any one claiming through or under him, shall begin drilling a test well or wells upon the land embraced in an oil and gas permit, he shall give notice to the supervisor of oil and gas operations, Geological Survey, of the district in which the land is situated of his intention to drill, submitting his drilling plan for approval, together with a bond, with qualified corporate surety, in the sum of $5,000 conditioned against failure, (*a*) to carry on all operations in accordance with approved methods and practice and in conformity with the operating regulations to the satisfaction of said supervisor; (*b*) to carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior, or his authorized representatives; (*c*) to take all reasonable precautions to prevent waste of oil or gas, damage to formation or deposits, injury to life or property, or economic waste; and (*d*) to repair promptly, so far as possible, any damage to mineral deposits or mineral-bearing formations resulting from his operations.

The notice of intention to drill and drilling plan must be furnished in triplicate. Blank forms of such notice and bond can be obtained from the supervisor on request. If the plan is approved and the bond is acceptable, the supervisor will return to the permittee one copy of the notice with his approval indorsed thereon, upon receipt of which drilling may be commenced and carried on in accordance with the approved plan.

The bond will be transmitted by the supervisor to the Commissioner of the General Land Office for consideration and filing.

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[28] See Circular of Mar. 18, 1927, p. 950.

All instructions and regulations in conflict herewith are modified to conform hereto, and Circular No. 754 is hereby revoked.

You will give such publicity hereto as may be possible without expense to the Government.

Very respectfully,

William Spry, *Commissioner.*

I concur.

Geo. Otis Smith,
Director, Geological Survey.

February 21, 1927.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 59]

Circular No. 1115 [29]

FEES—ACT OF FEBRUARY 25, 1920 (41 STAT. 437)

Department of the Interior,
General Land Office,
Washington, March 17, 1927.

Registers, United States Land Offices.

Gentlemen: The regulations approved March 11, 1920, Circular No. 672, and May 2, 1925, Circular No. 1004, relating to fees paid with applications for permits, leases, or other rights under the mineral leasing act of February 25, 1920 (41 Stat. 437), are amended as follows:

There shall be paid in connection with each application for prospecting permit filed pursuant to the provisions of the regulations approved April 23, 1924, Circular No. 929, and amendments thereof, a drawing service fee of $10 in addition to the fees required under existing regulations. The drawing service fee shall be immediately earned, applied, and credited on the compensation of the register within the limitations provided by law. Such fee shall constitute a flat service charge, and shall neither be returned by the register nor repaid.

Upon receiving the required payment the register will stamp on each application for permit filed as aforesaid the following:

Drawing service fee $10; neither returnable nor repayable.

The fees required by Circular No. 672 will be collected and applied in the manner required by the regulations approved May 2, 1925, Circular No. 1004.

Very respectfully,

William Spry, *Commissioner.*

Approved March 17, 1927.

E. C. Finney,
First Assistant Secretary.

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[29] See Circular No. 1158, p. 968.

[Reported, 52 L. D. 41]

BONDS UNDER OIL AND GAS PROSPECTING PERMITS

Department of the Interior,
Office of the Secretary,
Washington, March 18, 1927.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: Circular No. 1111, relating to bonds in connection with oil and gas permits paragraph 1, sec[illegible]y 21, 1927 not entirely clear, in that at least some parties in interest [illegible] impression that $1,000 bonds are still required to be furnished, not at the time of filing of application, but prior to the issuance of the permit, and that in special cases where the application embraces reserved deposits, bonds are to be in such other amount as may be fixed.

As you are aware, that is not the purpose or intention. The purpose is to do absolutely away with the requirement for a $1,000 bond heretofore required in connection with oil permit applications. No such bond will be required, either at the time of filing the application or afterwards. Bonds will be required only in two classes of cases:

(1) Where the permit is upon lands the surface of which has been disposed of by the United States under applicable laws with the oil and gas deposit reserved to the United States. In such cases, a bond will be exacted for the protection of the surface owner.

(2) All permittees before beginning to drill upon the land, or, in other words, at the time when they are ready to begin drilling, will be required to furnish a $5,000 bond for the purposes stated in section 2, Circular No. 1111.

I suggest that registers of local land offices and others interested in the administration of this act be furnished a copy of this letter.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 60]

ROYALTY INTERESTS IN OIL AND GAS PROSPECTING PERMITS NOT TO RECEIVE RECOGNITION

Instructions

Department of the Interior.
Washington, March 22. 1927.

Finney, *First Assistant Secretary:*

I have carefully considered your (Director of the Geological Survey and Commissioner of the General Land Office) letters of February 10 and March 1, 1927, relative to approval of assignments of royalty interests in prospecting permits.

It is clear that royalty interests in the minerals which may be discovered in and taken from lands included in prospecting permits under the leasing act of February 25, 1920 (41 Stat. 437), are of such conditional, uncertain, and speculative nature that there is in reality no actual interest in the land involved. The recognition of such interests imposes upon the department and its bureaus a large amount of work, which is not considered warranted or necessary.

Hereafter the policy of the department will be to refuse to approve or recognize or consider in any way mere contingent or royalty interests in prospecting permits.

[Reported, 52 L. D. 84]

CIRCULAR NO. 1120

POTASH REGULATIONS UNDER ACT OF FEBRUARY 7, 1927

POTASH PERMITS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 20, 1927.

Registers, United States Land Offices.

SIRS: The act of Congress approved February 7, 1927, entitled "An act to promote the mining of potash on the public domain" (44 Stat. 1057), authorizes the Secretary of the Interior, under such rules and regulations as he may prescribe, to issue prospecting permits, for a period not to exceed two years, for the exploration of the land described therein for potassium in any of the forms named in said act, and under authority thereof the following rules and regulations will govern the issuance of such permits:

1. *Qualifications of applicants.*—Permits may be issued to (*a*) citizens of the United States, (*b*) an association of such citizens, (*c*) or a corporation organized under the laws of any State or Territory thereof.

2. *Area and description.*—A permit may be issued for not more than 2,560 acres of public lands of the United States in reasonably compact form, by legal subdivisions if surveyed; if unsurveyed, by metes and bounds description.

3. *Rights under permit.*—The permit will confer upon the recipient the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium on the lands embraced therein. In the exercise of this right the permittee shall be authorized to remove from the premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits or any of them in commercial quantities.

4. *Reward for discovery.*—A permittee who shows that he has made a discovery of valuable deposits of potassium within the area of the permit and within the 2-year period for which issued, is entitled, under section 2 of the act, to a lease of any or all of the land embraced in the permit containing such deposits and chiefly valuable therefor, the area to be taken in compact form. The lease will be issued at such royalty and acreage rental as may be fixed pursuant to section 3 of the act. A discovery of a valuable deposit of potas-

sium shall be construed as the discovery of a deposit which yields commercial potassium in commercial quantities.

5. Under authority of section 3 of the act, unless otherwise specified in the permit when issued, a permittee who makes the first discovery in any district and becomes entitled to a lease, will be granted a lease at the minimum royalty of 2 per cent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and at the minimum rental of 25 cents per acre, for 20 years succeeding the issue of the lease.

6. *Form and contents of application.*—Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, and after due notation promptly forwarded for his consideration. No specific form of application is required, but it should cover, in substance, the following points, namely:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant; by affidavit of such fact, if native born; or, if naturalized, by the certificate thereof or affidavit as to time and place when issued; if a corporation, by certified copy of the articles thereof, and showing as to residence and citizenship of its stockholders.

(*c*) A statement of all holdings by the applicant of permits and leases under this act and pending applications therefor, and interests directly or indirectly held in such permits and leases.

(*d*) Description of land for which the permit is desired, by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify and segregate the land may be required before the permit is granted; also a statement whether the land is vacant and unclaimed.

(*e*) Reasons why the land is believed to offer a favorable field for prospecting.

(*f*) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such explorations will be prosecuted.

(*g*) Statement of the applicant's experience in operations of this nature, together with references as to his character, reputation, and business standing.

7. *Bonds.*—Where an application includes reserved deposits in lands theretofore entered or patented with reservation of potassium to the United States pursuant to the act of July 17, 1914 (38 Stat. 509), or where the lands constitute a portion of a reclamation project, the applicant will be required prior to issuance of the permit to furnish a bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against damage to the crops and improvements of the surface owner, or damage to the reclamation project or water supply thereof.

A bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against failure of the permittee to comply with the provisions of paragraph 5 of the permit, may be required either before or after the permit is issued, where the conditions are such as to warrant requiring such bond.

8. *Form of permit.*—The form of permit issued under this act will be in substance as follows:

Serial No. ______
THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
LAND OFFICE AT _________,
___________________, 19__.

POTASH PROSPECTING PERMIT

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of potash on the public domain," approved February 7, 1927, has granted and does hereby grant a permit to __________ of __________, of the exclusive right for a period of two years from date hereof to prospect the following-described lands ____________________________ for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium, but for no other purpose, upon the express conditions following:

1. To mark each corner of the outer boundaries and post a notice hereof in a conspicuous place on the land within 90 days, and to begin prospecting for said minerals within six months from date hereof, and diligently prosecute the exploratory and experimental work during the period of the permit, in manner and extent as follows, to wit: ____________________________________

2. To remove from said premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits in commercial quantities.

3. To afford all facility for inspection of such exploratory work on behalf of the Secretary of the Interior, and to report fully when required all matters pertaining to the character, progress, and results of such exploratory work, and to that end to keep and maintain such accounts, logs, or other records, as the Secretary of the Interior may require.

4. Not to assign or transfer the permit granted hereby without the express consent in writing of the Secretary of the Interior.

5. To carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior, or his authorized representatives (mining supervisors, U. S. Geological Survey), issued in pursuance of the operating regulations; to carry on all operations hereunder in accordance with approved methods and practice and in conformity with the operating regulations to the satisfaction of said representatives; to take all reasonable precautions to prevent waste of or damage to mineral deposits, injury to life, health, or property, or economic waste; and to repair promptly, so far as possible, any damage to mineral deposits or mineral-bearing formations resulting from his operations.

6. To furnish such bond or bonds with qualified corporate surety, as the Secretary of the Interior may at any time require, conditioned against the failure of the permittee to comply with the provisions of paragraph 5 hereof, and against damage to the crops and improvements of any surface owner entitled to such bond, or damages to any reclamation project embracing any of the lands herein described.

Expressly reserving to the Secretary of the Interior the right to permit for joint or several use such easements or right of way upon, through, or in the lands covered hereby as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in said act; and further reserving the right and authority to cancel this instrument for failure of the permittee to exercise due diligence in the execution of the prospecting work in accordance with the terms hereof.

Valid existing rights acquired prior hereto on the lands described herein will not be affected hereby.

Dated __________________.

____________________________,
First Assistant Secretary of the Interior.

POTASH LEASES

Section 3 of the act authorizes the Secretary of the Interior, under such general regulations as he may adopt, to lease, for the production of the potassium and other mineral deposits contained therein, public lands known to contain potassium in commercial quantity and character and found in some or any of the forms described in said act, leases to be issued for periods of 20 years, with preferential right in the lessee to renew the lease for successive periods of 10 years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any such period.

9. *Qualifications of applicants.*—Applications for leases in the form as herein provided may be filed in the proper district land office, addressed to the Commissioner of the General Land Office, by citizens of the United States, an association of such citizens, or corporations organized under the laws of any State or Territory thereof, the qualifications of the applicant in this respect to be fully covered by the application.

10. *Area and description.*—Leases are authorized by the terms of the act for an area not exceeding 2,560 acres, but will be granted only for such area as may be shown to the satisfaction of the Secretary of the Interior to contain deposits of potassium in such form and quantities as to constitute a commercial value, and will be limited to lands reasonably compact in form and described by legal subdivisions of the public land surveys, if surveyed, or if unsurveyed, by the approximate description they will bear when surveyed; the survey in the latter case to be made at the expense of the applicant if the application for lease is otherwise found satisfactory, the descriptions of the land in the lease when granted to conform to the official survey.

11. *Royalty and rentals.*—Except leases issued to permittees under claims of discovery, as stated in paragraph 5 hereof, the rate of royalty will be fixed prior to the issuance of the lease, but in no case can the royalty rate be less than 2 per cent of the quantity or gross value of the output of the potassium compounds and other related products, except sodium, at the point of shipment to market.

The rentals fixed by the act are to be paid annually in advance—25 cents per acre or fraction of an acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and $1 per acre for each year thereafter, such rental for any year being credited against royalties accruing for that year.

12. *Leases for potassium and sodium.*—Under section 4 of the act, potash leases may also provide for the development of sodium, magnesium, aluminum, or calcium deposits, associated with the potassium deposits, on terms not inconsistent with the terms of the act of February 25, 1920. In cases of application for leases under this provision of the act, the terms of the lease, including rate of royalty, rentals, and production requirements, will be in accord with the provisions of both acts.

13. *Form and contents of application.*—Applications for leases must be under oath and should be filed in the proper district land office, addressed to the Commissioner of the General Land Office. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant, by affidavit of such fact, if native born; if naturalized, by a certified copy of a certificate thereof in the form provided for use in public-land matters, unless such copy is on file. If the applicant is an association, each member thereof must show his qualifications as above stated; if a corporation, a certified copy of the articles of incorporation must be filed, together with a showing as to the residence and citizenship of its stockholders.

(*c*) A statement of all holdings by the applicant of permits and leases under this act, pending applications therefor, and interests directly or indirectly held in such permits and leases.

(*d*) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public land surveys, where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has been awarded the right to a lease, but before the issuance thereof, will be required to deposit with the district cadastral engineer of the public survey office of the State or district in which the land is located the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(*e*) Evidence that the land is valuable for its potassium content, except so much thereof as is necessary for the extraction and reduction of the leased minerals, with a statement as accurate as may be of the character and extent and mode of occurrence of the potassium deposits in the lands applied for.

(*f*) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(*g*) The application shall be accompanied by a notice for publication, in duplicate, prepared for the signature of the register, in substantially the following form:

Seral No. ______.
DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE AT ______,
____________________, *19*__.

NOTICE OF APPLICATION FOR POTASH LEASE

Notice is hereby given that in pursuance of the act of Congress approved February 7, 1927, ____________________, whose post-office address is __________ ______________, has made application for potash lease covering the following described lands: ____.

Said application will be submitted to the Commissioner of the General Land Office within 30 days from ____________________, 19__, and any and all persons claiming adversely any of the described lands are required to file their claims in this office on or before said date, otherwise their claims will be disregarded in the granting of said lease.

Other applications for lease of the described lands may be filed at any time prior to said date, in which case all applications so filed will be considered as prescribed by section 15 of the potash regulations.

______ ______, *Register.*

The register will fix the time within which adverse or conflicting claims and other potash lease applications may be filed at not less than 30 nor more than 40 days from first publication.

14. *Disposition of applications.*—(*a*) The application will be given current serial number by the register, noted on his records, and the notice for publication will be signed by the register.

After the receipt of such application, no applications, filings, or selections for the lands embraced therein will be permitted until so directed, except applications for leases under this act.

(*b*) The notice shall be published at the expense of the applicant, and proof of publication furnished promptly at the expiration thereof.

One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the register, of general circulation and best adapted to give the widest publicity in the county where the land is situated. If the land is in two or more counties, notice may be published in either. Notice must also be posted in the district land office during the period of publication.

(*c*) At the expiration of the period fixed in the notice the evidence of publication and posting in said office should be promptly transmitted by the register to the Commissioner of the General Land Office, with a statement of the status of the land involved as to conflicts, withdrawals, protests, and any other matters that may be necessary to determine the availability of the land or deposits therein for lease.

15. *Action in General Land Office.*—On the receipt of the application or applications in the General Land Office the same will be considered, investigation made, if deemed necessary, and submitted to the Secretary of the Interior with appropriate recommendation and report as to the proper action to be taken thereon, giving due consideration to the proposed effectual development of the alleged potash deposits and the amount of capital to be invested therein; the award of priority in case of conflicting applications to be determined by the respective proposed investments, date of productive development proposed by the several applicants, and any equities that may exist in one or more of the applicants resulting from improvement or development under claims made under other laws.

In the award of lease of any lands or deposits hereunder the right is reserved to order a sale of the lease at public auction to the bidder offering the highest cash bonus for lease thereof on such terms as may be prescribed for lease of the lands, in which case any application for lease theretofore filed will give the applicant no priority or preference in securing a lease of the lands.

16. *Lease by permittee.*—The permittee has a preference right within the two years of his permit to lease any or all of the land included in his permit, upon showing to the satisfaction of the Secretary of the Interior that he has discovered a valuable deposit of potash thereon and that such land is chiefly valuable therefor. Any lands not leased by the permittee will be subject to be leased by others under the terms set forth in these regulations.

17. *Form of lease.*—

Serial No. ______

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE AT ______,
____________________, *19*__.

POTASH LEASE

Date—Parties.—This indenture of lease entered into in triplicate this __________ day of __________, 19__, by and between the United States of

America, acting in this behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and ____________________, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved February 7, 1927 (44 Stat. 1057), entitled "An act to promote the mining of potash on the public domain," hereinafter referred to as the act, which is made a part hereof, witnesseth:

SECTION 1. *Purposes.*—That the lessor, in consideration of the rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine, remove, and dispose of all the potassium and associated minerals in, upon, or under the following-described tracts ____________________, containing __________ acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, or reservoirs necessary to the full enjoyment hereof, together also with the right to use any timber, stone, or other materials on said land in connection with the operations to be conducted hereunder, for a period of 20 years, with preferential right in the lessee to renew the same for successive periods of 10 years under such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the expiration of any such period: *Provided*, That this lease shall extend only to or include any right or interest in the lands, or the minerals therein, reserved to the United States under any entry that may be allowed, or patent that may issue, or may have issued, with a reservation of minerals to the United States.

SEC. 2. In consideration of the foregoing the lessee hereby agrees:

(*a*) *Investment.*—To invest in actual development or improvements upon the land leased, or for the benefit thereof, the sum of ________ dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during each year.

To furnish and maintain a bond in the sum of $5,000, conditioned upon the expenditure of the amount specified in (*a*) hereof and compliance with the terms and provisions of this lease.

(*b*) *Royalty.*—To pay for the output of potassium and all other related products a royalty of ______ per cent, and for the output of sodium compounds a royalty of 12½ per cent, of the gross value thereof at the point of shipment to market. Such royalties shall be paid monthly, the royalties for each month to be paid during the next succeeding month to the register of the United States land district in which the land is situated, or if not in a land district, to the Commissioner of the General Land Office.

(*c*) *Rents.*—To pay the register of the district land office on all leases annually, in advance, beginning with the date of the execution of the lease, the following rentals: Twenty-five cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth years, respectively, and $1 per acre for each and every calendar year thereafter during the continuance of the lease, such rental for any year to be credited against the royalties as they accrue for that calendar year.

(*d*) *Taxes.*—To pay when due all taxes assessed and levied under the laws of the State upon the improvements output of mines, or other rights, property, or assets of the lessee.

(*e*) *Monthly statements.*—To furnish monthly certified statements in detail in such form as may be prescribed by the lessor of the amount and value of output from the leasehold as a basis for determining amount of royalties. All books and accounts of the lessee shall be open at all times for the inspection by any duly authorized officer of the department. Falsification of such statements shall be a basis for action for the cancellation of the lease.

(*f*) *Plats and reports.*—To furnish annually a plat in the manner and form prescribed by the Secretary of the Interior showing all prospecting and development work on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, as well as any buildings, reduction works, or equipment, situated elsewhere and owned or operated in conjunction with, or as a part of the operations conducted hereunder, accompanied by a report, in detail, as to the stockholders, business transacted, assets and liabilities of the lessee, together with a statement of the amount of potash, and other minerals produced and secured by operations hereunder, and the cost of production thereof.

(*g*) *Potassium in solution.*—Where the minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of leased lands without permission from the Secretary of the Interior.

(*h*) *Diligence—Prevention of waste—Health and safety of workmen.*—To develop and produce in commercial quantities, with reasonable diligence, the potassium and other mineral deposits susceptible of such production in the lands covered hereby; to carry out, at the expense of the lessee, all reasonable orders of the Secretary of the Interior, or his authorized representatives (mining supervisors, U. S. Geological Survey), issued in pursuance of the operating regulations; to carry on all mining, reducing, refining, and other operations in accordance with approved methods and practice and in conformity with the operating regulations to the satisfaction of said representatives; to take all reasonable precaution to prevent damage to mineral deposits, injury to life, health, or property, or economic waste; to observe all State laws relative to the health and safety of workmen and employees; and to provide access at all times to mining and related productive operations for examination and inspection by authorized representatives of the lessor.

(*i*) *Forfeiture of lease.*—To deliver up to the lessor in good order and condition and subject to the provisions of section 5 hereof on the termination of this lease as a result of forfeiture thereof pursuant to section 31 of the act of February 25, 1920, the lands covered thereby, including all fixtures, machinery, improvements, and appurtenances, together with such personal property situate on any of said lands as may be necessary or convenient for the continued operation to the full extent and capacity of the leased premises.

(*k*) *Reserved deposits.*—To comply with all statutory requirements where the surface of the lands embraced herein has been disposed of under laws reserving to the United States the mineral deposits therein.

(*l*) *Assignment.*—Not to assign or sublet, without the consent of the Secretary of the Interior, the premises covered hereby.

(*m*) *Excess holdings.*—To observe faithfully the provisions of section 27 of the act of February 25, 1920, as amended by act of April 30, 1926, in so far as applicable hereto.

(*n*) *Minimum production.*—Beginning with the fourth full calendar year of the lease, except when operations are interrupted by strikes, the elements or casualties not attributable to the lessee, to produce each year potassium or associated minerals from the premises covered hereby, to the gross value or not less than ______ dollars at the point of shipment, or to pay royalty on said gross value if the value of actual production be less.

SEC. 3. The lessor expressly reserves:

(*a*) *Easements and rights of way.*—The right to permit for joint or several use such easements or rights of way upon, through, or in the lands hereby leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act; and the treatment and shipment of the products thereof, by or under authority of the Government, its lessees or permittees, and for other public purposes.

(*b*) *Disposition of surface.*—The right to dispose of the surface of the land embraced herein under existing law, or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein.

(*c*) *Monopoly and fair prices.*—Full power and authority to carry out and enforce all the provisions of section 30 of said act of February 25, 1920, to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

SEC. 4. *Surrender and termination of lease.*—The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease at any time after the first four years of the term herein provided for, by giving six months' notice in writing to the lessor, and upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered by such relinquishment.

SEC. 5. *Purchase of materials, etc., on termination of lease.*—That on the termination of this lease, by surrender or forfeiture, the lessor, his agent, licensee, or lessee, shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, any or all buildings, machinery, equipment and tools, whether fixtures or personalty, placed by the lessee in or on the land leased hereunder, save and except equipment such as underground timbering, supports, shaft linings, and well casings, necessary for the preservation of the mine or other development works, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party thereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings, or other property, shall be removed from their normal position; that at any time within a period of 90 days after election by the lessor not to purchase or after expiration of said period of six months without election by the lessor, the lessee shall have the privilege of removing from the premises said buildings and other property except said underground equipment and structures as aforesaid.

SEC. 6. *Judicial proceedings in case of default.*—If the lessee shall fail to comply with the provisions of the act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at date hereof, and such default shall continue for 90 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act of February 25, 1920. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

SEC. 7. *Heirs and successors in interest.*—It is further agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

SEC. 8. *Unlawful interest.*—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part of this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States, approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By ________________________,
Secretary of the Interior, Lessor.
________________________, *Lessee.*
________________________, *Lessee.*
________________________, *Lessee.*

Witnesses:
____
____
____

18. *Operations.*—Prospecting and mining operations under permits and leases will be governed by operating regulations, approved by the Secretary of the Interior. Administration of the operating regulations and supervision of operations on permits and leases will be under the direction of the Geological Survey. Before beginning op-

erations permittees and lessées should consult with the mining supervisor of the Geological Survey for the area in which operations are to be conducted and obtain from him a copy of the operating regulations.

19. *Limitation on holdings.*—The act provides that the general provisions of the act of February 25, 1920, shall be applicable. The Secretary of the Interior is given authority to prescribe necessary and proper rules and regulations, and in view of the limitations fixed by section 27 of the latter act on holdings of permits and leases of the minerals enumerated therein no person, association, or corporation will be granted, either directly or indirectly or by approval of assignments, permits or/and leases for more than 2,560 acres or which will when added to the area already held exceed in the aggregate 2,560 acres in the same potassium prospecting or leasing field, except in cases where, because of the character of the deposits, the capital necessary for their proper development, or other conditions, a larger area is found necessary for economic mining operations and to secure the best development thereof, but in such cases the total shall not exceed 7,680 acres.

20. *Repealing and saving clause.*—By section 6 of the act, the act of October 2, 1917 (40 Stat. 297), is repealed, with provision that the repeal shall not affect pending applications for permits or leases filed prior to January 1, 1926, or valid claims existing at the passage of the act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

Under these provisions applications for permits or leases filed prior to January 1, 1926, will be considered under the act of October 2, 1917, and if allowable permits or leases will be issued under said act unless an applicant request permit or lease under the later act.

Pending applications filed under the act of October 2, 1917, subsequent to January 1, 1926, will be allowed to proceed to permits or leases provided the applicants file supplemental applications agreeing to accept permits or leases under the law now in force and pay the filing fees prescribed for applications filed under these regulations

As to potash mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

21. *Fees and commissions.*—(*a*) For receiving and acting upon each application for prospecting permit or lease filed in the district land office in accordance with these regulations there shall be paid by the applicant a fee of $2 for every 160 acres or fraction thereof in the application, such fee in no case to be less than $10, the same to be considered as earned when paid and to be credited to the compensation of the register within the limitations provided by law.

(*b*) Registers shall be entitled to a commission of 1 per cent of all moneys received in each register's office. Such commission will not be collected from the applicant or lessee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the act, as provided in section 35 of the act of February 25, 1920; also that such commissions will be credited on compensation of registers only to the extent of the limitation provided by law for maximum compensation of such officer.

Very respectfully,

William Spry, *Commissioner.*

Approved April 20, 1927.

E. C. Finney,
Acting Secretary of the Interior.

[Reported, 52 L. D. 175]

Circular No. 1127

REGULATIONS REGARDING APPLICATIONS FOR REDUCTION OF GOVERNMENT ROYALTY IN OIL AND GAS LEASES

Department of the Interior,
General Land Office,
Washington, June 28, 1927.

Registers of United States Land Offices; Supervisors of Oil and Gas Operations, Geological Survey:

In accordance with authority conferred upon the Secretary of the Interior by section 17 of the act of February 25, 1920 (41 Stat. 437), which provides that:

> Whenever the average daily production of any oil well shall not exceed 10 barrels per day, the Secretary of the Interior is authorized to reduce the royalty on future productions when in his judgment the wells can not be successfully operated upon the royalty fixed in the lease. The provisions of this paragraph shall apply to all oil and gas leases made under this act.

Applications for reduction of royalty in oil and gas leases where the daily production per well per day is 10 barrels or less averaged over the leasehold as a whole for a continuous period of at least three months next preceding the date of application for reduction will be handled in the following manner:

1. Applications for reduction of royalty shall be filed in duplicate in the United States land office of the district in which the land is situated. The register will immediately transmit the original thereof to the Commissioner of the General Land Office by special letter and the duplicate to the supervisor of oil and gas operations of the Geological Survey having jurisdiction in the district.

2. Applications for reduction of royalty will be received for an entire leasehold or on any part of the area thereof segregated for computation of royalties by the terms of the lease, by advertisement, bidding, and award though included in the same lease with other lands, or by approved assignment. All holders of record of the tract must join in the application for reduction of royalty, and the supporting showing must be complete for the entire tract involved.

3. Upon receipt of the duplicate copy of the supervisor of oil and gas operations, Geological Survey, will make investigation of the matters set forth by the applicant and will make prompt report of his findings to the Director of the Geological Survey. The report of the supervisor shall cover particularly the productivity of the wells on the area involved and the extent of the efforts being made by the lessee toward economical and efficient operation; the ability of the lessee to operate the wells at a profit after paying reasonable

lifting costs, a reasonable interest on capital honestly and wisely invested, and the Government royalty; and shall include recommendations as to action to be taken in the public interest.

4. The application for reduction of royalty must contain the following information:

(*a*) Serial number of lease and land district.

(*b*) Name and address of each holder of the record or legal title.

(*c*) Name and address of operators or sublessees, if any.

(*d*) Description by legal subdivision of land for which application is filed.

(*e*) Plat showing location, field number, and status of each well that has been drilled.

(*f*) A tabulated statement showing for each month of a period of not less than 6 months next prior to the date of filing of application:

(1) The aggregate amount of oil subject to royalty in conformity with the provisions of section 3 of the operating regulations;

(2) The number of wells counted as producing in accordance with said section of the operating regulations; and

(3) The average production per well per day as determined from oil subject to royalty and count of producing wells.

(*g*) A detailed statement of expenses and costs of operating the wells, and all facts tending to show whether the wells can be successfully operated upon the royalty fixed in the lease and whether the operator is in good faith doing everything that may be reasonably expected in economic operation. This statement should include full information as to whether, and if so what, royalties are paid to others than the United States, efforts made to reduce them, and agreement of the holders of the lease and of royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalty.

William Spry, *Commissioner.*

June 25, 1927. I concur.

Geo. Otis Smith,
Director, Geological Survey.

Approved June 28, 1927.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 196]

Circular No. 1129

AMENDING CIRCULAR NO. 1073, INSTRUCTIONS UNDER SECTION 27 OF THE LEASING ACT OF FEBRUARY 25, 1920 (41 STAT. 437), AS AMENDED BY THE ACT OF APRIL 30, 1926 (44 STAT. 373)

Department of the Interior,
General Land Office,
Washington, August 1, 1927.

Registers, United States Land Offices.

Gentlemen: Circular No. 1073 (51 L. D. 475), approved June 18, 1926, concerning limitations of holdings under section 27 of the act of February 25, 1920 (41 Stat. 437), as amended by the act of April 30, 1926 (44 Stat. 373), is hereby amended by adding thereto the following paragraph:

While under section 27 as so amended, the limitations as to holdings under the act are governed by the number of acres and not by the number of permits which may be held by the same person, association, or corporation, provided the combined area does not exceed the limitations fixed, there appears to have been no purpose to change the area which may be acquired under lease at a royalty of 5 per cent in case of discovery. Accordingly, oil and gas permits will not be issued nor assignments of such permits approved to the same applicant where the result would be to enable such applicant to acquire under section 14 of the act a right to lease at 5 per cent royalty a larger area than he would be entitled to lease at such royalty had the areas of all the permits been embraced in a single permit and discovery made thereon.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved August 1, 1927.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 52 L. D. 353]

ABANDONMENT OF WELLS ON OIL AND GAS PROSPECTING PERMITS

DEPARTMENT OF THE INTERIOR,
Washington, April 23, 1928.

The DIRECTOR GEOLOGICAL SURVEY.
The COMMISSIONER GENERAL LAND OFFICE.

GENTLEMEN: The following procedure for abandonment of wells on oil and gas prospecting permits is approved and you will govern yourselves accordingly.

1. Whenever, in the opinion of the supervisor of oil and gas operations, any well on a prospecting permit should be plugged and abandoned, he shall call upon the permittee to perform the necessary work. (See Operating Regulations, sec. 1 (*a*) and (*e*).) If steps to perform the required work are not taken with reasonable promptness, the supervisor shall report to the Geological Survey stating the conditions that exist, the efforts made by him to have them corrected, and the results thereof, and the approximate cost of abandoning properly each well involved, and shall make specific recommendation as to the action to be required of the permittee.

2. The Geological Survey will promptly notify the General Land Office, specifying the abandonment work necessary by the permittee.

3. The General Land Office will immediately serve notice by registered mail on the permittee at his record address, through the register of the local land office, allowing 15 days from receipt of notice within which to initiate proceedings looking to the abandonment in accordance with the operating regulations.

4. The General Land Office will transmit by registered mail to the home office of the surety company, bonding the permittee, a copy of such notice, advising the surety company that unless its principal takes steps to comply with the order within the time allowed the Government will protect its interests through appropriate proceed-

ings and will thereafter look to the surety company for reimbursement under the bond.

5. The General Land Office will send two copies of such notices to the Geological Survey, one copy of each notice to be forwarded to the appropriate supervisor of oil and gas operations, Geological Survey.

6. At the expiration of the time allowed the register will report to the General Land Office with evidence of service, at the same time sending a copy of his report to the supervisor of oil and gas operations.

7. Upon receipt of such information from the local land office the supervisor will, if the facts then before his office warrant, confirm the register's report by a report to the Geological Survey.

8. Upon receipt of such report from the supervisor the Geological Survey will immediately notify the General Land Office, reporting all facts in detail including the estimated cost of abandoning each well involved.

9. Upon receipt of such reports from the register and from the Geological Survey the General Land Office will call on the home office of the surety company, furnishing an estimate of the cost of the necessary work and allowing the company 15 days to elect to make the abandonment of its own motion under the supervision of the oil and gas supervisor, Geological Survey, or to indicate what action, if any, it desires to take if and when the work is undertaken by the Government.

10. The General Land Office will notify the Geological Survey of the action taken by the surety company.

11. The Geological Survey will notify the supervisor, and if the surety company does not elect to perform the work on its own motion will, pursuant to the fiscal regulations of that office, authorize the supervisor to proceed with the necessary work of abandonment.

12. On receipt of such authorization from the Geological Survey as may be necessary in a particular case, the supervisor will proceed with the work, keeping a detailed account by well and job of all expenditures. Vouchers submitted by the supervisor for payment should be separated from other expenditures and should be marked to indicate the job to which they relate by serial number of the case record, the name of the permittee, and name of the surety company.

13. The supervisor will upon completion of the work submit to the Geological Survey an itemized detailed account with appropriate references to vouchers, contracts, etc.; this account will be made the basis for procedure to obtain reimbursement.

14. The Geological Survey will submit to the General Land Office a complete report, in duplicate, of the cost incurred in the work of abandonment.

15. The General Land Office will call on the home office of the surety company to make settlement for the amount due, submitting to the company an itemized statement and all related facts, and giving notice that unless the surety company makes settlement within 30 days from notice the entire matter will then be referred to the Department of Justice with recommendation that suit be instituted to recover the amount of expenditure made plus costs.

16. When the expenditure made in the matter of the abandonment is in excess of the bond obligation the supervisor of oil and gas operations will report specifically to the Geological Survey as to the advisability of bringing suit against the permittee to obtain judgment and execution for the full amount expended.

17. The procedure above outlined shall apply where applicable to other defaults by permittees or lessees.

Yours very truly,

E. C. FINNEY,
First Assistant Secretary.

[Reported, 52 L. D. 362]

CIRCULAR No. 1147

EXTENSIONS OF TIME FOR DRILLING UNDER OIL AND GAS PROSPECTING PERMITS—ACTS OF JANUARY 11, 1922, APRIL 5, 1926, AND MARCH 9, 1928—CIRCULARS NOS. 801, 946, 1041, AND 1063, SUPERSEDED [1]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 2, 1928.

Registers, United States Land Offices.

GENTLEMEN: The act of Congress approved January 11, 1922 (42 Stat. 356), provides that the Secretary of the Interior may—

> if he shall find that any oil or gas permittee has been unable, with the exercise of diligence, to begin drilling operations or to drill wells of the depth and within the time prescribed by section 13 of the act of Congress approved February 25, 1920 (Forty-first Statutes, page 437), extend the time for beginning such drilling or completing it, to the amount specified in the act for such time, not exceeding three years, and upon such conditions as he shall prescribe.

The act of April 5, 1926 (44 Stat. 236), authorizes the Secretary of the Interior to grant extensions for an additional period of two years—

> if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to begin drilling operations or to drill wells of the depth and within the time required by existing law, or has drilled wells of the depth and within the time required by existing law, and has failed to discover oil or gas, and desires to prosecute further exploration.

By act approved March 9, 1928 (45 Stat. 252), the Secretary is given authority to extend for an additional period of two years any oil or gas prospecting permit issued under the act of February 25, 1920, or extended under the act of January 11, 1922, or as further extended under the act of April 5, 1926—

> if he shall find that the permittee has been unable, with the exercise of reasonable diligence, to begin drilling operations or to drill wells of the depth and within the time required by existing law, or has drilled wells of the depth and within the time required by existing law, and has failed to discover oil or gas, and desires to prosecute further exploration.
>
> SEC. 2. Upon application to the Secretary of the Interior, and subject to valid intervening rights and to the provisions of section 1 of this Act, any permit which has already expired because of lack of authority under existing law to

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[1] See act of Congress approved Jan. 23, 1930 (Pub. No. 35).

make further extensions, may be extended for a period of two years from the date of the passage of this Act.

Accordingly, the owner of an oil and gas prospecting permit may secure an extension of time thereon for beginning or completing drilling operations by filing an application therefor showing that he is entitled to such extension under the provisions of one of said acts. The application may be filed in the district land office having jurisdiction over the land involved or in General Land Office, and must be under oath or accompanied by the affidavit of the permittee, or his attorney in fact, where such attorney has been given full control of operations under the permit, and corroborated by the affidavit of at least one disinterested person having knowledge of the facts. The applicant must show:

(1) That the corners of the claim have been marked with substantial monuments and that a notice has been posted as required by paragraph 1 of the permit, as there is no provision of law under which the time may be extended for compliance with that requirement.

(2) What efforts, if any, have been made to comply with the terms of the permit, the reasons for delay in the full compliance therewith, and when he expects to commence or resume operations and any arrangements made to drill the permit lands; if the permittee has entered into a contract to drill the land, the application must be supported by the affidavit of the drilling contractor as to the terms of the contract, the means at his command for carrying out the same, and the time when he expects to begin drilling operations thereunder.

(3) The drilling activities on the geologic structure on which the permit land is located, or within 10 miles thereof, and the location of any oil or gas well being drilled by section, township, and range, with full information as to when the well was begun, its approximate depth, and the prospects for discovery of oil or gas.

Contribution development programs proposing a joint test by a group of permittees should be submitted to the department at their inception in order that it may be determined whether, upon the facts disclosed in a given case, any and all permittees proposing to contribute may do so with the assurance that so long as the test is diligently prosecuted through their efforts, but limited to the period provided for in the leasing act and the acts granting extensions, drilling on their own permits will be excused.

If the application for extension of time is based on contribution made by the permittee toward sinking of a test well upon the structure, the location of the well, full disclosure of the amount and nature of such contributions and the conditions under which the same were made must be shown, which showing must be corroborated by the affidavit of one or more or the parties under whose authority the well is being drilled. Every application of this nature will be submitted to the Geological Survey for report, and if the report is unfavorable the application will be rejected subject to appeal. If the Survey shall report that it is without sufficient data as to structures in the region upon which to base any recommendation, only contributions by permittees, any portion of whose permit areas which could be lawfully drilled lies within a 6-mile square formed by going 3 miles in each cardinal direction from the northeast corner of the legal subdivision on which the test well is found, or from the corner nearest which the test well is shown to be found, will be recognized.

The purchase of capital stock of a corporation which is drilling for oil or gas in unproven territory and which is dependent upon the sale of its stock for the continuation of its drilling operations by the holder of a prospecting permit for lands upon the same structure as that where the drilling is carried on may be considered a contribution toward the cost of proving the structure which will warrant allowance of extension of time in which to comply with the terms of his permit, if contribution may be considered acceptable in other respects, and if the stock does not have a market value or is not salable. Clearly, if the stock has a market value the stock is in itself a consideration for the purchase price and there is no contribution as contemplated here. Purchase money for stock which does not go to the corporation or which is not needed or used to meet the cost of testing the structure is not a contribution which can be accepted as sufficient in this connection.

In order to make the purchase of stock acceptable as a contribution applicable in the matter under consideration, the department must be satisfied that the purchase induced the corporation to begin or to continue drilling, when in the absence of such purchase it would not have begun or continued to drill. That does not mean, of course, that the purchaser of stock by one permit holder must be sufficient, in and of itself, as an inducement, but that several permit holders may join in making contributions by means of purchasing stock.

While no rule can be laid down which will govern every case of this nature, the department will insist that contributions shall be substantial, taking into consideration the contributing permit holder's area, the amount that has been expended in the test or the estimated cost thereof, and the sources of means therefor.

Any extension of time to perform one of the acts required by the permit necessarily extends for the same period the time for the performance of all subsequent requirements. Where a permit bond has been filed which does not by its terms cover extension of the permit, the consent of the surety company to an extension of its bond concurrent with the life of the permit as extended will be required (*a*) where the surface rights are embraced in a prior valid homestead entry, (*b*) where a reclamation project is involved, and (*c*) where drilling has been done on the permit land. In the latter case the bond must be kept in force until a $5,000 drilling bond is furnished by the permittee or his contractor at the time the notice of intention to drill is filed with the supervisor of oil and gas operations, Geological Survey, for the district in which the land is located, which bond and drilling plan must be approved by the supervisor before drilling is commenced, as provided by Circular No. 1111.

This circular will supersede Circulars Nos. 801, 946, 1041, and 1063.

You will give the widest publicity to the above regulations that may be possible without expense to the United States.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved May 2, 1928.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 52 L. D. 463]

CIRCULAR No. 1158

RELATIVE TO FEES REQUIRED WITH OIL AND GAS PERMIT APPLICATIONS AND OTHER APPLICATIONS AND SELECTIONS; SECTION 31, CIRCULAR NO. 672, CONSTRUED; CIRCULAR NO. 1115 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 1, 1928.

Registers, United States Land Offices.

GENTLEMEN: There appears to be a lack of uniformity in the action of the different land offices in the matter of fees for oil and gas permit applications. Some offices collect $32 and no more as the maximum amount for lands included in one oil and gas application, while others are collecting $2 additional for any excess acreage above 2,560 acres.

As a matter of equitable administration permits are issued for areas exceeding 2,560 acres by invoking the rule of approximation, and while section 31 of Circular No. 672 provides that the filing fee on an application for permit shall be "$2 for each 160 acres or fraction thereof," that provision is held to apply only to cases involving less than 2,560 acres, and as the law fixes the limit of 2,560 acres in any one case for which a permit may be issued, the maximum fee of $32 only should be charged, in cases where the maximum acreage is exceeded but the rule of approximation is not violated.

Hereafter an application for oil and gas prospecting permit will not effect a segregation of the land applied for if not accompanied by at least the minimum fee of $10. If less than such amount is tendered you will give the application current serial number and allow the applicant 30 days from notice within which to pay the required amount. Should any application for the same land be received in the meantime accompanied by at least the minimum fee the latter application will be given priority over the other.

The above rule as to segregation will also hereafter be applied to agricultural and other kinds of applications or selections where a minimum fee or minimum payment is specified. The minimum fees or payments necessary to gain segregative effect for such other kinds of applications or selections shall be those which are prescribed by existing regulations in connection with the particular application or selection that may be involved.

Provided, however, That where the laws or regulations so plainly express the full amount of fees or other payments required to be made at the time of filing, that no mistaken interpretation thereof could reasonably be made, the amounts tendered by the conflicting applicants when filing their applications may be an element for consideration in the adjudication of their respective priorities, notwithstanding a tender of the minimum fee has been made by all of them.

The minimum fee, as in the case of all other fees, must be in the form prescribed by paragraph 72, Circular No. 616 (46 L. D. 513), approved August 9, 1918, and as amended by the regulations contained in Circular No. 1008 of May 20, 1925 (51 L. D. 148).

In the matter of oil and gas prospecting permit applications filed upon the effective date of cancellation of an oil and gas prospecting permit, the drawing service fee of $10 prescribed by Circular No. 1115, approved March 17, 1927, must accompany the application, together with the proper fee required by paragraph 31 (a) Circular No. 672. However, instead of immediately earning the service fee you will carry it in the unearned account until 10 o'clock a. m., and should no other application be filed, thereby obviating the necessity of a drawing, you will return such fee to the applicant by your official check. If more than one application is filed, thus requiring a drawing, the service fee will be earned as instructed by Circular No. 1115. Where only one application is filed the words "neither returnable nor repayable," will be lined out of the notation required by Circular No. 1115 to be made upon such applications.

All existing regulations not in harmony herewith are modified accordingly.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved August 1, 1928.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 52 L. D. 483]

CIRCULAR No. 1162

REQUIRING PROPER DESCRIPTION OF LAND IN OIL AND GAS APPLICATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 29, 1928.

Registers, United States Land Offices.

SIRS: In connection with applications for oil and gas permits filed in your offices it has been found that many of the applications describe lands not in conformity with the latest plat of survey, while in others the description is very uncertain. In a few instances the applicant has described certain tracts by lots or otherwise and added "and all other vacant land within" certain sections or parts of sections.

In order to avoid the uncertainty as to the lands desired and to obviate considerable extra correspondence in relation thereto, you are directed to examine each application in connection with the plats of survey and if discrepancies or uncertainties exist you will immediately advise the applicant thereof and allow him 15 days within which to give a proper description of the land and that upon his failure to do so the application will be considered only as to the tracts of land described in conformity with the latest plats of survey, the balance of the application being rejected.

This matter can be attended to during the period of 30 days you hold the application in your office under the regulations and upon submission of such application to this office you will forward a copy of all the correspondence had with evidence of service and advise as to the action taken by the applicant.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

Approved August 29, 1928.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 926

EXPIRATION OF PROSPECTING PERMITS—ACTS OF OCTOBER 2, 1917, FEBRUARY 25, 1920, AND FEBRUARY 7, 1927

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 1, 1928.

Registers, United States land offices.

SIRS: The instructions of April 5, 1924 (Circular No. 926, 50 L. D. 364), are revised to read as follows:

> Action taken by certain district land offices on applications for lands which have been included in prospecting permits outstanding for more than two years indicate that not all district land officials fully understand the status of such permits, and in order that the matter may be made clear, you are instructed as follows:
>
> Permits to prospect for potash under the acts of October 2, 1917, and February 7, 1927 (Circulars No. 594, 46 L. D. 323, and No. 1120, 52 L. D. 84), and for sodium under the act of February 25, 1920 (Circular No. 699, 47 L. D. 529), are issued for terms of two years without provision for extensions of time. If application for patent or lease, based on claim of discovery within the 2-year period, is not filed, the permit expires by limitation fixed by both the law and the terms of the permit, and is no longer a bar to the allowance of other filings for the land which it embraced. No formal action to terminate the permit is necessary or will ordinarily be taken.
>
> Coal permits may be extended for a period of two years pursuant to the act of March 9, 1928 (45 Stat. 251). Therefore, a coal permit can not be considered as expired until the full period for which granted and for which it may be extended has elapsed, except permits which expired on or before March 9, 1928, and no extension thereof has been applied for, or permits regularly canceled and the cancellation noted on your records. Where application for lease has not been filed, a coal permit will, at the end of four years from date of issue, be considered no longer in force and no bar to other applications for the lands described therein.

As to oil and gas permits, the law authorizes extensions of time beyond the 2-year period, and such permits are to be considered in force until canceled and the cancellation noted on your tract books in accordance with the governing regulations.

WILLIAM SPRY, *Commissioner.*

Approved December 1, 1928.

E. C. FINNEY,
First Assistant Secretary.

FEDERAL OIL CONSERVATION POLICY

Order No. 337.

DEPARTMENT OF THE INTERIOR,
Washington, March 16, 1929.

The Federal oil conservation policy announced by President Hoover will be energetically executed by the Interior Department.

There are more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices. Steps were taken several days ago toward the rejection of all such applications, and registers of local land offices have been instructed not to receive new applications.

Probably in none of the cases on hand has the applicant expended money for developmental purposes, although he may have gone to some expense in opposing conflicting claims or furnishing additional evidence in support of his application.

Where land covered by pending applications is likely to be drained by adjoining wells on privately owned lands, the question of granting permits on Government land will be considered in the light of facts developed by departmental investigation.

With regard to the 20,000 outstanding permits on public lands, the department will deal fairly with holders who have been diligent in maintaining their equities. Where actual drilling operations have been started and are being continued, opportunity will be given to carry on developmental work to finally determine the character of the land. Immediate steps will be taken, however, to cancel all such permits where no drilling has been done or money spent in development.

To determine the facts in connection with existing oil and gas permits, I have named a committee consisting of the Commissioner of the General Land Office, the Director of the Geological Survey, and the solicitor for the department. They will consider the extent of operations which have been prosecuted under outstanding permits to determine whether permittees have acquired equities which should be recognized and to make appropriate recommendations.

Where permits are now in good standing, either because of recent issue or previous extension of time, no action will be taken during the remaining period covered by the permit. When that time has expired, however, and the permittee has failed to comply with the terms of his permit, he will be called upon immediately to show cause why the permit should not be canceled. This includes so-called group developments heretofore approved and in which extensions have been allowed, where permittees are engaged in a joint drilling program, test wells being drilled by a responsible drilling company on some of the public lands in the area covered by the permits. So long as this program is being diligently prosecuted, no adverse action will be taken.

No leases will be issued for oil and gas production unless required by mandate of law, such as discovery under existing permits, as provided by the mineral leasing act, or through the advertisement of a minimum of 25,000 acres of Osage Indian lands annually, as directed by the act of Congress approved March 2, 1929.

Ray Lyman Wilbur, *Secretary.*

PROCEDURE FOR EXECUTING PUBLIC LAND OIL CONSERVATION POLICY

Order No. 338.

Department of the Interior,
Washington, March 20, 1929.

The following outlines the general procedure in the Department of the Interior for executing the President's public land oil conservation policy:

1. All oil and gas applications and permits pending in the office of the First Assistant Secretary of the Interior, under the general leasing act, will be returned to the General Land Office.

2. All oil and gas cases pending in the office of the solicitor will be reviewed to determine their present status. Those coming within the new policy should be returned to the General Land Office.

3. The preparation of letters in the General Land Office calling upon delinquent permittees to show cause why their permits should not be canceled will be expedited.

4. Oil and gas permits now in good standing will not be proceeded against so long as the terms of the permits are being timely complied with.

5. Where a permittee is entitled to a lease because of discovery, it is mandatory to lease only one-fourth of the area, under strict interpretation of the President's oil policy, except that when the permit covers 160 acres or less, the permittee would be entitled to lease the full acreage. The remainder will not be leased unless such action is required in the public interest.

6. The departmental committee, consisting of the Solicitor, the Commissioner of the General Land Office, and the Director of the Geological Survey, will consider the extent of operations which have been prosecuted under existing oil and gas permits, to determine whether permittees have acquired equities which should be recognized and make appropriate recommendations to the Secretary. In reviewing permits, representative cases may be recommended for public hearing before the Secretary of the Interior to determine lines of policy.

7. Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929, and will reject all pending applications for permits. They will forward to the General Land Office all applications for extensions of time, etc., relative to outstanding permits.

8. Applications for extension of permits on hand should be disposed of promptly. Those not involving expenditure of money in development work will be denied by the General Land Office. All other cases will be referred to the special committee by memoranda of the General Land Office showing the facts disclosed by the record, and of the Geological Survey as the status of development work.

9. The General Land Office will hold for cancellation, allowing 15 days in which to show cause, all permits on which there is no prima facie evidence that expenditure of money in development work has been made. All other cases should be referred to the special committee by memoranda of the General Land Office showing the facts disclosed by the record and of the Geological Survey as to status of development work.

10. All oil and gas permits in the Geological Survey pending report to the General Land Office will be promptly considered under the new policy. Where these cases involve conflict of agricultural and mineral rights, or questions of similar character, they should be completed by the Geological Survey. All others should be returned to the General Land Office with appropriate report when such is required under the new policy; otherwise without report.

11. Supervisors of oil and gas operations in the Geological Survey must deny approval to notices of intention to drill on permits that are not shown to be in good standing by the terms of the permit itself or an approved extension of time.

12. The Geological Survey will report to the Secretary on the liklihood of oil and gas drainage of Government lands in various producing and wildcatting fields where a claim of drainage is made. The special committee will consider the question of drainage only when incidentally involved in individual permits before it for consideration.

13. Permits issued and outstanding in Executive order Indian reservations under the act of March 3, 1927, will be considered and disposed of in the same manner as provided in the foregoing paragraphs.[30]

Ray Lyman Wilbur,
Secretary of the Interior.

AMPLIFICATION OF INSTRUCTIONS RELATIVE TO FEDERAL OIL CONSERVATION POLICY

Department of the Interior,
Washington, April 4, 1929.

On April 1, 1929, a committee of attorneys representing certain oil companies interested in the development of oil and gas in public land States presented five points on which an amplification of the Secretary of the Interior's orders of March 16 and 20 was requested. The questions were placed before the special committee of the department appointed to handle oil and gas cases arising under the new policy. This committee on April 3, 1929, made the following report and recommendations, in which Secretary Wilbur concurred.

(1) Applications for permits filed prior to March 12, 1929, should not be rejected by a blanket order without right of appeal. The cir-

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[30] See instructions of Mar. 15, 1927 (52 L. D. 55).

cumstances surrounding each application should be examined into and the individual applicant, in each instance, should be permitted to show cause why his application should be granted. If the applicant has acted in good faith in making or causing to be made geological examinations and/or improvements and/or expenditures tending toward the development of the property, the permit should issue. Pending applications for permits, otherwise allowable, should be granted where there has been a prolonged delay on the part of the Government in acting thereon without fault of the applicant.

Answer. The President's policy clearly contemplates the disallowance of unapproved permits. This relates to unapproved applications for oil and gas prospecting permits. The law vests in the Secretary discretion to refuse permits. The regulations adopted by the then Secretary of the Interior just after passage of the law so provide. Presumptively no applicant has spent money for development—if he did, it was without departmental permission or knowledge. Other expenses such as general geological surveys, searching for vacant lands, filing fees, etc., do not in our opinion furnish basis for equitable allowance. No applicant was guaranteed the right to file. In fact priority depended on being first to file his application, not upon money expended in preparing to do so.

(2) Permits and leases, and applications for either of them, covering lands which apparently are valuable only or principally for the production of natural gas, should be excepted from the restrictive orders, rules and regulations of the Government relating to the conservation of oil, provided there is an economic demand for such gas.

Answer. Where production of natural gas is shown on lands included in existing permits in good standing, if there be an economic demand for such gas, the particular circumstances in each case or locality should govern. Because of the public interest involved, the effort should be to meet the needs of all existing contracts with municipalities or public utilities, but the approval of each program of development for such gas supplies should be conditioned upon meeting present demand without waste so as to provide the longest possible life of each field for this beneficial use of the gas. Equities and expenditures in development of permit areas, in development of groups of permits heretofore approved, for pipe lines under existing arrangements, or contracts to supply municipalities, should be considered.

(3) Permits embraced within so-called group development or contribution projects, where permittees are engaged in a joint-drilling program, should be entitled to such further extensions of time as may be allowable under existing laws, so long as said program or any other approved program, is being diligently prosecuted.

Answer. Group or contributory development should not be authorized in any cases in future. Where group or contributory development programs have been authorized in the past, the department has granted specific extensions of time on permits on the promise of an operator to do specified development work substantially equivalent to the combined requirements of the individual permits concerned, and the Government has in every case lived up to its end of the bargain. The operators, to show good faith to the permittees as well as to the Government, should complete the promised development work at least 60 days prior to the expiration of the period of extension in order that permittees may, if appropriate, make application for leases earned by discovery, make timely plans for drilling on individual permits substantially proved by discovery, make plans for further exploratory drilling, etc. At no time has the department agreed to grant successive extensions of time until a large area should be proved up and permit the operator to delay selection of leasing areas until that end had been accomplished. On the contrary each program has been for a limited time with future extensions, if any, to be considered on their merits in the light of conditions existing at or near the expiration of extensions granted. Under present conditions, if the operator has completed his development program on the basis of which extensions were granted, further action should follow the rules applicable to individual-permit cases, no legal or equitable right to other action having been earned by completing work promised in payment for special consideration previously granted. If, with good reason, the operator has failed to make timely completion of the work he promised to do, limited extensions on permits on which promised work is in progress may be made.

(4) In the event of discovery on a permit, both A and B leases covering all the land in said permit should issue upon application therefor. The rights of the permittee, lessee and operator would thus be defined.

Answer. The law mandatorily requires the lease of one-fourth upon discovery. Leasing of the remainder is discretionary and should not issue upon the application of the permittee, unless and until such action is required in the public interest.

(5) It is recognized that true conservation should neither encourage nor demand the drilling of wells on individual permits or leases, except in response to market requirements. (See Federal Oil Committee of Nine conservation report of January 28, 1928, to the Federal Oil Conservation Board.) Practical effect to this should be given by extension or suspension of drilling requirements under both permits and leases, this preserving existing rights and equities thereunder.

Answer. As to leases when issued after discovery of oil or gas, the Secretary can and should relieve from drilling additional wells or from the production of oil from existing wells upon request of the lessee, and this should be the procedure, the relief in each case being made subject to such conditions as are justified. As to approved existing permits in good standing, the law contemplates development and drilling on permits with diligence to a discovery. Cases may arise, however, where, because of existing or threatened excess production or for other reasons in the public interest, the Secretary of the Interior, may, on his own initiative, request cessation of development operations in specific areas, such cessation to be accompanied by equivalent extension of time or suspension of permits.

EQUITIES RECOGNIZED UNDER OIL CONSERVATION POLICY

Department of the Interior,
May 3, 1929.

In carrying out the President's oil conservation policy, the committee of the Department of the Interior, for consideration of pending claims, has made a recommendation concerning possible equities in oil and gas cases where adequate geological surveys have been carried on. The recommendation which was approved by the Secretary of the Interior, is as follows:

> We recommend that in all cases where clear and definite evidence is filed showing substantial expenditures for reliable geological surveys upon the lands embraced in oil and gas applications and permits, or groups of applications upon the same structure or where the structure is not clearly defined upon the surface, within an area not exceeding six miles square as provided in existing regulations, that the same be regarded as a sufficient equitable basis for the allowance of the applications pending on March 12, 1929, and issuance of permits thereon, or where permits have already issued and requests for extension are timely filed, that it be regarded as sufficient equitable ground for extension of such permits. Geological work may be distinguished from ordinary preliminary expenditures as the latter do not operate for the benefit or enlightenment of the Government, whereas geological work supplies information which is to the advantage of and may be used by the Government in the classification and disposition of the public lands and their resources. This is to be contingent upon a showing of good faith and of responsible diligence on the part of the applicants, permittees or those claiming through or under them.

Circular No. 1194

SODIUM REGULATIONS—PERMITS AUTHORIZING EXPLORATION OF PUBLIC LANDS FOR SODIUM

[Superseding Circular No. 699]

Department of the Interior,
General Land Office,
Washington, June 14, 1929,

Registers, United States land offices.

Sirs: The act of Congress approved February 25, 1920, entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (41 Stat. 437), as amended by the act approved December 11, 1928 (45 Stat. 1019), authorizes the Secretary of the Interior, under such rules and regulations as he may prescribe, to issue prospecting permits, for a period not to exceed two years, for the exploration of the land described therein for sodium in any of the forms named in said act, and under authority thereof the following rules and regulations will govern the issuance of such permits:

1. *Qualifications of applicants.*—Permits may be issued to (*a*) citizens of the United States, (*b*) an association of such citizens, (*c*) or a corporation organized under the laws of any State or Territory thereof.

2. *Lands to which applicable.*—The permit thus issued may include not more than 2,560 acres of public lands of the United States in reasonably compact form, by legal subdivisions if surveyed; if unsurveyed, by metes-and-bounds description.

3. *Rights under permit.*—The permit will confer upon the recipient the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium on the lands embraced therein. In the exercise of this right the permittee shall be authorized to remove from the premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits or any of them in commercial quantities.

4. *Reward for discovery.*—If the permittee within the two years specified shall discover valuable deposits of one or more of the forms of sodium as described in said act within the area covered by his permit, such discovery shall entitle him to a lease of any or all of the land embraced in the permit containing such deposits and chiefly valuable therefor, the area to be taken in compact form. The discovery of a valuable deposit of sodium under this permit shall be construed as the discovery of a deposit which yields commercial sodium in commercial quantities.

5. *Camp sites.*—In addition to land embraced in the permit the Secretary may, in his discretion, issue to the permittee, during the life of the permit, the exclusive right to use a tract of unoccupied, nonmineral public land, not exceeding 40 acres in area, for purposes connected with and necessary to the development of the deposits covered by the permit, subject to the payment of an annual rental of not less than 25 cents per acre.

6. *Form and contents of application.*—Applications for permits should be filed in the proper district land office, addressed to the Commissioner of the General Land Office, and after due notation promptly forwarded for his consideration. No specific form of application is required, but it should cover, in substance, the following points, namely:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant; by affidavit of such fact, if native born; or, if naturalized, by the certificate thereof or affidavit as to time and place when issued; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(*c*) A statement of all holdings by the applicant of permits and leases under the sodium provisions of this act and pending applications therefor and interests, directly or indirectly, held in such permits and leases.

(*d*) Description of the land for which the permit is desired, by legal subdivisions, if surveyed, and by metes and bounds, if unsurveyed, in which latter case, if deemed necessary, a survey sufficient more fully to identify and segregate the land may be required before the permit is granted; also a statement whether the land is vacant and unclaimed.

(*e*) Reasons why the land is believed to offer a favorable field for prospecting.

(*f*) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such explorations will be prosecuted.

(*g*) Statement of the applicant's experience in operations of this nature, together with references as to his character, reputation, and business standing.

7. On the receipt of the application, if found in compliance with the terms of the act, a permit will issue and the district land office be promptly notified thereof.

8. *Bonds.*—Where an application includes reserved deposits in lands theretofore entered or patented with reservation of sodium to the United States, pursuant to the act of July 17, 1914 (38 Stat. 509), or where the lands constitute a portion of a reclamation project, the applicant will be required prior to issuance of the permit to furnish a bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against damage to the crops and improvements of the surface owner, or damage to the reclamation project or water supply thereof.

A bond with qualified corporate surety in the sum of $1,000, or such other amount as may be fixed, conditioned against failure of the permittee to comply with the provisions of paragraph 5 of the permit, may be required either before or after the permit is issued, where the conditions are such as to warrant requiring such bond.

9. *Form of permit.*—The form of permit issued under this act will be in substance as follows:

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR.

SODIUM PROSPECTING PERMIT

Know all men by these presents, that the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended by the act approved December 11, 1928, has granted and does hereby grant a permit to ______________________________ of the exclusive right for a period of two years from date hereof to prospect the following-described lands __________________________ for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium, but for no other purpose, upon the express conditions as follows, to wit:

1. To begin the prospecting for said minerals within 90 days from date hereof and to diligently prosecute the exploration and experimental work during the period of such permit in the manner and extent as follows, to wit:

____

2. To remove from said premises only such material as may be necessary to experimental work and the demonstration of the existence of such deposits in commercial quantities, to keep a record of all material removed, and to pay a royalty of 12½ per cent of the sale value at point of shipment of all material sold.

3. To afford all facility for inspection of such exploratory work on behalf of the Secretary of the Interior and to report fully when required all matters pertaining to the character, progress, and results of such exploratory work, and to that end to keep and maintain such accounts, logs, or other records as the Secretary of the Interior may require.

4. Not to assign or transfer the permit granted hereby without the express consent in writing of the Secretary of the Interior.

5. To carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior or his authorized representatives (mining supervisors, United States Geological Survey) issued in pursuance of the operating regulations; to carry on all operations hereunder in accordance with approved methods and practice and in conformity with the operating regulations, to the satisfaction of said representatives; to take all reasonable precautions to prevent waste of or damage to mineral deposits, injury to life, health, or property, or economic waste; and to repair promptly, so far as possible, any damage to mineral deposits or mineral-bearing formations resulting from his operations.

6. To furnish such bond or bonds with qualified corporate surety as the Secretary of the Interior may at any time require, conditioned against the failure of the permittee to comply with the provisions of paragraph 5 hereof, and against damage to the crops and improvements of any surface owner entitled to such bond or damages to any reclamation project embracing any of the lands herein described.

Expressly reserving to the Secretary of the Interior the right to permit for joint or several use such easements or right of way upon, through, or in the lands covered hereby as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in said act; *and further reserving* the right and authority to cancel this instrument for failure of the permittee to exercise due diligence in the execution of the prospecting work in accordance with the terms hereof.

Valid existing rights, acquired prior hereto, on the lands described herein, will not be affected hereby.

Dated ____________________.

____________________________,
Assistant Secretary of the Interior.

II

REGULATIONS PERTAINING TO LEASES FOR LANDS CONTAINING SODIUM

Section 24, as amended by the act of December 11, 1928 (45 Stat. 1019), authorizes the Secretary of the Interior to lease public lands containing valuable deposits of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium. In order to carry out the provisions of the law relating to sodium leases, the following regulations are hereby prescribed.

1. *Qualifications of applicants.*—Applications for leases in the form as herein provided may be filed in the proper district land office, addressed to the Commissioner of the General Land Office by citizens of the United States, associations of such citizens, or corporations organized under the laws of any State or Territory thereof; the qualifications of the applicant in this respect to be fully covered by the application.

2. *Area and description.*—Leases are authorized by the terms of the act for an area not exceeding 2,560 acres, but will be granted for such area as may be shown to the satisfaction of the Secretary of the Interior to contain valuable deposits of sodium, and will be limited to lands reasonably compact in form and described by legal

subdivisions of the public land surveys, if surveyed, or if unsurveyed, by survey made at the expense of the applicant if the application for lease is otherwise found satisfactory.

3. *Action by register.*—Applications when filed with the district land office will be given the current serial number, promptly noted of record and transmitted to the Commissioner of the General Land Office, accompanied with a statement as to the status of the lands embraced therein. After the receipt of such applications, no applications, filings, or selections for the lands embraced therein will be permitted until so directed, except applications for leases under this act.

4. *Notice of application.*—When an application for a lease is filed in the district land office, notice thereof shall be published at the expense of the applicant in a general newspaper to be designated by the register, published in the county where the lands are situated, describing the lands embraced therein, stating the purpose of the application and that it will be submitted to the Commissioner of the General Land Office for action within 30 days from the date fixed therein, advising all adverse claimants or protestants that if they desire to object or protect any interest as against the application, prompt action to that end should be taken; and further advising the public that any other applications for lease of the same lands may be filed at any time during said period of publication without publication of notice of said second or further application, in which case application so filed will be considered as prescribed in section 5 hereof. Proof of publication will be required prior to action by the commissioner on the application for lease.

5. *Action in General Land Office.*—On the receipt of the application or applications in the General Land Office the same will be considered, investigation made if deemed necessary, and submitted to the Secretary of the Interior with appropriate recommendation and report as to the proper action to be taken thereon, giving due consideration to the proposed effectual development of the alleged sodium deposits, and the amount of capital to be invested therein; the award of priority in case of conflicting applications to be determined by the respective proposed investments, date of productive development proposed by the several applicants, and any equities that may exist in one or more of the applicants resulting from improvement or development under claims made under other laws.

In the award of lease of any lands or deposits hereunder the right is reserved to order a sale of the lease at public auction to the bidder offering the highest cash bonus for lease thereof on such terms as may be prescribed for lease of the lands, in which case any application for lease theretofore filed will give the applicant no priority or preference in securing a lease of the lands.

6. *Lease by permittee.*—The permittee has a preference right within the two years of his permit to file application to lease any or all of the land included in his permit, upon showing to the satisfaction of the Secretary of the Interior that he has discovered a valuable deposit of sodium thereon.

7. *Verity of statements.*—The verity of all representations contained in applications for leases shall be deemed an essential thereto, and a moving consideration to the award of a lease, if such action

is taken; misrepresentations in this respect will be treated as a proper ground for proceedings in forfeiture, as provided in section 31 of the act.

8. *Lease a waiver of other claims.*—The acceptance of a lease under the provisions of this act will be construed as a waiver and relinquishment of all claims on the part of the applicant for any lands embraced within said lease and claimed under the provisions of any other law.

9. *Operations.*—Prospecting and mining operations under permits and leases will be governed by operating regulations, approved by the Secretary of the Interior. Administration of the operating regulations and supervision of operations on permits and leases will be under the direction of the Geological Survey. Before beginning operations permittees and lessees should consult with the mining supervisor of the Geological Survey for the area in which operations are to be conducted and obtain from him a copy of the operating regulations.

10. *Royalty and rentals.*—The rate of royalty will be fixed prior to the issuance of the lease, but in no case can the royalty rate be less than 2 per cent of the quantity or gross value of the output of the sodium compounds and other related products, at the point of shipment to market.

The rentals fixed by the act are to be paid annually in advance—25 cents per acre or fraction of an acre for the first calendar year or fraction thereof, 50 cents per acre for the second, third, fourth, and fifth years, respectively, and $1 per acre for each year thereafter, such rental for any year being credited against royalties accruing for that year.

11. *Form and contents of application.*—Applications for leases must be under oath and should be filed in the proper district land office, addressed to the Commissioner of the General Land Office. No specific form of application is required, and no blanks will be furnished, but it should cover in substance the following points:

(*a*) Applicant's name and address.

(*b*) Proof of citizenship of applicant, by affidavit of such fact, if native born; if naturalized, by a certified copy of a certificate thereof in the form provided for use in public-land matters, unless such copy is on file. If the applicant is an association, each member thereof must show his qualifications as above stated; if a corporation, a certified copy of the articles of incorporation must be filed, together with a showing as to the residence and citizenship of its stockholders.

(*c*) A statement of all holdings by the applicant of permits and leases under the sodium provisions of this act, pending applications therefor, and interests directly or indirectly held in such permits and leases.

(*d*) Description of land for which the lease is desired, by legal subdivisions if surveyed, and by metes and bounds if unsurveyed, in which latter case the description should be connected to some corner of the public-land surveys where practicable, or to some permanent landmark. If the land is unsurveyed, the applicant, after he has **public survey office** of the district in which the land is located the estimated cost of making a survey of the lands, any balance remaining after the work is completed to be returned. This survey will be an extension of the public-land surveys over the tract applied for, the leased land to be conformed to legal subdivisions of such survey when made.

(*e*) Evidence that the land is valuable for its sodium content, except so much thereof as is necessary for the extraction and reduction of the leased minerals, with a statement as accurate as may be of the character and extent and mode of occurrence of the sodium deposits in the lands applied for.

(*f*) Proposed method, so far as determined, as to the process of mining and reduction to be adopted, the diligence with which such operations will be carried on, and the contemplated investment in reduction works and development, and the capital available therefor.

(*g*) The application shall be accompanied by a notice for publication, in duplicate, prepared for the signature of the register, in substantially the following form:

Serial No. ______.

DEPARTMENT OF THE INTERIOR,
U. S. LAND OFFICE AT___________________,
___________________________, *19*__.

NOTICE OF APPLICATION FOR SODIUM LEASE

Notice is hereby given that in pursuance of the act of Congress approved February 25, 1920, as amended by the act approved December 11, 1928, ____________________, whose post-office address is __________________, has made application for sodium lease covering the following described lands: __________________________

Any and all persons claiming adversely any of the above-described lands are required to file their claims in this office on or before ___________________; otherwise their claims will be disregarded in the granting of such lease.

Other applications for lease of the described lands may be filed at any time prior to said date, in which case all applications so filed will be considered, as prescribed by section 5 of the Sodium Regulations.

_______________________, *Register*.

The register will fix the time within which adverse or conflicting claims may be filed at not less than 30 nor more than 40 days from first publication.

12. *Disposition of application.*—(*a*) The application will be given the current serial number by the register, will be noted on his records, and the notice for publication will be signed by him.

(*b*) One copy of the signed notice will be delivered to the applicant, who will cause the same to be published in a newspaper to be designated by the register, of general circulation, and best adapted to give the widest publicity in the county where the land is situated. If the land is in two or more counties, notice may be published in either. Notice must also be posted in the local land office during the period of publication.

(*c*) At the expiration of the period of publication the evidence of publication and posting in said office should be promptly transmitted by the register to the Commissioner of the General Land Office, with a statement of the status of the land involved as to conflicts, withdrawals, protests, and any other matters that may be necessary to determine the availability of the land or deposits therein for lease.

13. *Form of lease.*—

Serial No. ______.

DEPARTMENT OF THE INTERIOR,
U. S. LAND OFFICE AT __________________.

SODIUM LEASE

Date—Parties.—This indenture of lease entered into in quintuplicate this ___________day of ______________________, 19__, by and between the United States of America, acting in this behalf by the Secretary of the Interior, party of the first part, hereinafter called the lessor, and ___________________________, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," as amended by the act of December 11, 1928 (45 Stat. 1019), hereinafter referred to as the act, which is made a part hereof, witnesseth:

SECTION 1. *Purposes.*—That the lessor, in consideration of the rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to mine, remove, and dispose of all the sodium and associated minerals in, upon, or under the following described tracts of land situated in the County of _________________, State of ______________________, and more particularly described as follows, to wit: ______________________________________containing ______ acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, or reservoirs necessary to the full enjoyment hereof, together also with the right to use any timber, stone, or other materials on said land in connection with the operations to be conducted hereunder, for the period of 20 years, with preference right in the lessee to renew for successive periods of 10 years each upon such reasonable terms and conditions as the party of the first part may determine: *Provided*, That this lease shall extend only to or include any right or interest in the lands, or the minerals therein, reserved to the United States under any entry that may be allowed, or patent that may issue, or may have issued, with a reservation of minerals to the United States.

SEC. 2. In consideration of the foregoing the lessee hereby agrees:

(*a*) To invest in actual development, or improvements, upon the land leased, or for the benefit thereof, the sum of __________ dollars, of which sum not less than one-third shall be so expended during the first year succeeding the execution of this instrument and a like sum each of the two succeeding years, unless sooner expended; and submit annually, at the expiration of each year for the said period, an itemized statement of the amount and character of said expenditure during such year.

To furnish and maintain a bond with approved corporate surety in the sum of $5,000, conditioned upon the expenditure of the amount specified in (*a*) hereof, and upon compliance with the terms and provisions of this lease.

(*b*) *Royalty.*—To pay a royalty of ______ per cent of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market. Such royalty shall be paid monthly, the royalty for each month to be paid during the next succeeding month to the register of the United States land district in which the land is situated, or if not in a land district, to the Commissioner of the General Land Office.

(*c*) *Rents.*—To pay the register of the district land office on all leases annually, in advance, beginning with the date of the execution of the lease, the following rentals: 25 cents per acre for the first calendar year or fraction thereof; 50 cents per acre for the second, third, fourth, and fifth calendar years, respectively; and $1 per acre for each and every calendar year thereafter during the continuance of the lease, such rental for any year to be credited against the royalties as they accrue for that year.

(*d*) *Taxes.*—To pay when due all taxes assessed and levied under the laws of the State upon the improvements, output of mines, or other rights, property, or assets of the lessee.

(*e*) *Monthly statements.*—To furnish monthly certified statements in detail in such form as may be prescribed by the lessor of the amount and value of output from the leasehold as a basis for determining amount of royalties. All books and accounts of the lessee shall be open at all times for the inspection by any duly authorized officer of the department. Falsification of such statements shall be a basis for action for the cancellation of the lease.

(*f*) *Plats and reports.*—To furnish annually a plat in the manner and form prescribed by the Secretary of the Interior showing all prospect and development work on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands, or on lands covered by permit issued under section 25 of the act, as well as any buildings, reduction works, or equipment, situated elsewhere and owned or operated in conjunction with, or as a part of, the operations conducted hereunder, accompanied by a report, in detail, as to the stockholders, business transacted, assets and liabilities of the lessee, together with a statement of the amount of sodium, and other minerals produced and secured by operations hereunder, and the cost of production thereof.

(*g*) *Sodium in solution.*—Where the minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the outer boundaries of the land covered hereby without permission from the Secretary of the Interior, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners.

(*h*) *Diligence—Prevention of waste—Health and safety of workmen.*—To develop and produce in commercial quantities, with reasonable diligence, the sodium and other mineral deposits susceptible of such production in the lands covered hereby; to carry out, at the expense of the lessee, all reasonable orders of the Secretary of the Interior, or, his authorized representatives (mining supervisors, United States Geological Survey), issued in pursuance of the operating regulations; to carry on all mining, reducing, refining, and other operations in accordance with approved methods and practice and in conformity with the operating regulations to the satisfaction of said representatives; to take all reasonable precaution to prevent damage to mineral deposits, injury to life, health, or property, or economic waste; to observe all State laws relative to the health and safety of workmen and employees; and to provide access at all times to mining and related productive operations for examination and inspection by authorized representatives of the lessor.

(*i*) *Forfeiture of lease.*—To deliver up to the lessor in good order and condition and subject to the provisions of section 5 hereof on the termination of this lease as a result of forfeiture thereof pursuant to section 31 of the act of February 25, 1920, the lands covered thereby, together with any land permission for the use of which has been granted under and pursuant to the provisions of section 25 of said act, including all fixtures, machinery, improvements, and appurtenances, together with such personal property situate on any of said lands as may be necessary or convenient for the continued operation to the full extent and capacity of the leased premises.

(*k*) *Reserved deposits.*—To comply with all statutory requirements where the surface of the lands embraced herein has been disposed of under laws reserving to the United States the mineral deposits therein.

(*l*) *Assignment.*—Not to assign or sublet, without the consent of the Secretary of the Interior, the premises covered hereby.

(*m*) *Excess holdings.*—To observe faithfully the provisions of section 27 of the act of February 25, 1920, as amended by the act of April 30, 1926, in so far as applicable hereto.

(*n*) *Minimum production.*—Beginning with the fourth full calendar year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, to produce each year sodium or associated minerals from the premises covered hereby, to the gross value of not less than __________ dollars at the point of shipment, or to pay royalty on said gross value if the value of production be less.

SEC. 3. The lessor expressly reserves:

(*a*) *Easements and rights of way.*—The right to permit for joint or several use such easements or rights of way upon, through, or in the lands hereby leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act; and the treatment and shipment of the products thereof, by or under authority of the Government, its lessees or permittees, and for other public purposes.

(*b*) *Disposition of surface.*—The right to dispose of the surface of the land embraced herein under existing law, or laws hereafter enacted, in so far as said surface is not necessary for use of the lessees in extracting and removing the deposits therein.

(*c*) *Monopoly and fair prices.*—Full power and authority to carry out and enforce all the provisions of section 30 of said act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

SEC. 4. *Surrender and termination of lease.*—The lessee may, on consent of the Secretary of the Interior first had and obtained, surrender and terminate this lease at any time after the first four years of the term herein provided for, by giving six months' notice in writing to the lessor, and upon payment of all rents, royalties, and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary of the Interior that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered by such relinquishment.

SEC. 5. *Purchase of materials, etc., on termination of lease.*—That on the termination of this lease, by surrender or forfeiture, the lessor, his agent, licensee, or lessee, shall have the exclusive right, at the lessor's election, to purchase at any time within six months, at the appraised value thereof, any or all buildings, machinery, equipment, and tools, whether fixtures or personalty, placed by the lessee in or on the land leased hereunder, or on lands covered by permit under section 25 of the act, save and except equipment such as underground timbering, supports, shaft linings, and well casings, necessary for the preservation of the mine or other development works, which shall be and remain a part of the realty without further consideration or compensation; that the purchase price to be paid for said buildings, machinery, equipment, and tools to be purchased as aforesaid shall be fixed by appraisal of three disinterested and competent persons (one to be designated by each party thereto and the third by the two so designated), the valuation of the three or a majority of them to be conclusive; that pending such election to purchase within said period of six months none of said buildings or other property shall be removed from their normal position; that at any time within a period of 90 days after election by the lessor not to purchase or after expiration of said period of six months without election by the lessor, the lessee shall have the privilege of removing from the premises said buildings and other property except said underground equipment and structures as aforesaid.

SEC. 6. *Judicial proceedings in case of default.*—If the lessee shall fail to comply with the provisions of the act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof, or of the general regulations promulgated and in force at date hereof, and such default shall continue for 90 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

SEC. 7. *Heirs and successors in interest.*—It is further agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

SEC. 8. *Unlawful interest.*—It is also further agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part of this lease, or derive any benefit that may arise therefrom, and the provisions of section 3741 of the Revised Statutes of the United States (sec. 22, Title 41 U. S. C.), and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States, approved March 4, 1909 (35 Stat. 1109, secs. 204, 205, and 206 of Title 18, U. S. C.), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In witness whereof—

THE UNITED STATES OF AMERICA,
By ________________________________,
Assistant Secretary of the Interior, *Lessor.*
____________________________, *Lessee.*
____________________________, *Lessee.*
____________________________, *Lessee.*

Witnesses:
____
____
____

III

USE PERMITS FOR CAMP SITE AND REFINING WORKS

Section 25 of the act of February 25, 1920, provides that in addition to areas which may be included in prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding 40 acres in area for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

In accordance with the provisions of this section the following regulations are prescribed, by which a permittee or lessee under the act may acquire the right therein granted.

1. Application may be made by the permittee or lessee identifying by serial number his permit or lease, setting forth in detail the specific reasons why it is necessary for the applicant to have the use of an additional tract of land for a camp site, refining works, or other purposes, connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

2. The application should contain a description of the lands by legal subdivisions, if surveyed, or, if not surveyed, by the approximate description thereof as it will appear when surveyed, for which the right of use is desired, together with a statement of the particular reasons why it is especially adapted thereto, either in point of location, topography, or otherwise, and that it is unoccupied, nonmineral land.

3. Use permits granted hereunder will be for indeterminate periods, dependent in that respect upon the existence of the permit or lease made the basis of the right authorized by section 25; upon the termination of such permit or lease all rights secured hereby will also cease and terminate, and such condition shall be expressly recognized and stated in the application.

4. No blank forms of application will be furnished to applicants hereunder, but they will be guided by the foregoing as to the essential requirements of the application, which will be verified by the affidavit of the applicant.

5. The rental of not less than 25 cents per acre must be paid the register of the proper local land office as soon as applicant is notified of the allowance of the permit, and a like sum each year thereafter in advance.

IV

FORM OF USE PERMIT FOR CAMP SITE OR REFINING WORKS

The form of use permit issued under section 25 of the act of February 25, 1920, will be in substance as follows:

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR.

USE PERMIT

Know all men by these presents, that the Secretary of the Interior, under and by virtue of section 25 of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium, on the public domain," approved February 25, 1920, has granted to and does hereby grant to ______________________________ the holder of __________, bearing serial number ________, the exclusive right, so long as needed, used, and occupied, to use, during the life of the aforesaid ______________________________, the following described tract of land, to wit: __________________________, for a camp site, refining works, and other purposes connected with and necessary to the proper development and the use of the deposits covered by the aforesaid ________________________, all rights hereunder to cease and terminate upon the termination of the aforesaid ____________________, and conditioned upon the payment in advance of 25 cents per acre for the area covered hereby.

Dated, ____________________.

__________________________,
Secretary of the Interior.

V

REPEALING CLAUSE, ETC.

Repealing and saving clause.—Section 37 of the act provides that hereafter the deposits of coal, phosphate, sodium, oil, oil shale, and gas referred to and described in the act may be disposed of only in the manner provided by the act, " except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery." As to sodium claims, those claims initiated under the preexisting law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

Fees and commissions.—(*a*) For receiving and acting upon each application for prospecting permit or lease filed in the district land office in accordance with these regulations, there shall be paid by the applicant a fee of $2 for every 160 acres or fraction thereof in the application, such fee in no case to be less than $10, the same to be considered as earned when paid and to be credited to the compensation of the register within the limitations provided by law.

(*b*) Registers shall be entitled to a commission of 1 per cent of all moneys received in each register's office. Such commission will not be collected from the applicant or lessee in addition to the moneys otherwise provided to be paid.

It should be understood that the commissions herein provided for will not affect the disposition of the proceeds arising from operations under the act, as provided in section 35 thereof; also that such commissions will be credited on compensation of registers only to the extent of the limitation provided by law for maximum compensation of such officers.

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved June 14, 1929.

JOS. M. DIXON,
Acting Secretary.

(Act omitted.)

MINNESOTA LANDS

[Reported, 45 L. D. 40]

Circular No. 470[1]

INSTRUCTIONS UNDER THE MINNESOTA DRAINAGE LAWS

Department of the Interior,
General Land Office,
Washington, D. C., April 15, 1916.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

Sirs: The instructions contained in Circular No. 234, approved April 24, 1913 (42 L. D. 104), issued under the act of May 20, 1908 (35 Stat. 169), known as the Volstead Act, are hereby revised and amended to read as follows:

1. All public lands in the State of Minnesota which are subject to entry, and entered lands for which no final certificates have issued, are by said act made subject to the State drainage laws to the same extent and in the same manner in which lands of like character held in private ownership are or may be subject to said laws.

2. The provisions of the act do not extend the Minnesota drainage laws to entered lands for which final certificates have issued. Lands allotted or reserved for Indians, or reserved for any other purpose, are not subject to the provisions of the act; nor are Chippewa lands classified as "pine lands," until the same have been opened to entry.

3. The lands are assessed under the State drainage laws by the designated officials of the counties in which the lands are located. The county auditor is required to file in the office of register of deeds a statement showing the drainage charges, and such charges are a lien upon the land from the date of the filing of such statement, and bear interest at the rate of 6 per cent per annum until paid. Certified lists showing the amount of the charges assessed against each smallest legal subdivision are required by the act to be furnished the register and receiver of the district in which the lands are located as soon as the charges are assessed. It is the duty of the district land officers to compare said lists with the records of their office, and if any charges are assessed against land which is not subject to the State drainage laws, such as those mentioned in regulation 2, they will promptly notify the county auditor thereof, and advise him that the lands are not subject to sale thereunder.

4. The charges against the Government lands subject thereto may, under section 3 of the act, be enforced by a sale of the lands by the State in the same manner and under the same proceedings as such charges would be enforced against lands held in private ownership.

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[1] Amended by circulars of Jan. 26, 1917, p. 996; June 28, 1918 (No. 605½), p. 998; and Apr. 1, 1925 (No. 989), p. 1001.

These sales are held by the auditors of the counties in which the lands are located, in accordance with the public notice given by him, beginning on the second Monday in May of each year.

5. Purchasers of unentered lands at such sales by the State have 90 days from the date of sale within which to pay to the receiver of the proper district land office the minimum price of $1.25 per acre, or such other price as may have been fixed by law for such lands, together with the usual fees and commissions, both original and final, charged in entry of like lands under the homestead laws, and make entry in accordance with section 5 of the act and these regulations.

6.[2] Unless the purchasers of unentered lands make such entry within 90 days, any other qualified person may pay to the proper receiver of the land office the unpaid fees, commissions, and purchase price, and the sum at which the land was sold for drainage charges, including any excess, and if bid in by the State interest at the rate of 7 per cent per annum from the date of sale, and make entry for the land.

7. Purchasers of unpatented lands shall have the right to make entry for the lands within 90 days after the period of redemption fixed in the State laws has expired, there having been no redemption by the entryman, upon paying to the receiver the fees and commissions and the price of the land, less any amount paid by the entryman.

8. Unless the purchaser of entered but unpatented lands makes entry in accordance with the preceding paragraph any other qualified person may make the required payments, as specified in said paragraph, and make entry for the land.

9.[3] If a homestead entry, after the land covered thereby has been sold for delinquent taxes, should be subsequently relinquished or canceled prior to the expiration of the period of redemption, the purchaser at the tax sale, if the taxes have not been redeemed, will have the preference right for 30 days after due notice of the cancellation or relinquishment of the entry, to file an application to purchase the land without having to wait until the expiration of the period of redemption. Such right is given to the actual purchaser only if the land has not been redeemed. This right to purchase is not given to the homestead entryman who allowed the land to be sold for taxes and then relinquished the same.

10. In addition to the payments mentioned in the foregoing paragraphs, entrymen for lands in the former Red Lake Reservation are also required to pay the sum of 3 cents per acre, as required by section 8 of the act of May 20, 1908. The price of the land under said act of 1908 is not affected by the provisions of the free-homestead act of May 17, 1900 (31 Stat. 179).

11.[2] In the sale of unentered lands by the State, should there be paid any excess over and above the drainage charges due, the excess amount shall be paid to the receiver before patent is issued. In the case of unpatented lands the excess shall be paid to the proper county official for the benefit of and payment to the entryman for the land.

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[2] See amendment, p. 996.

[3] See Circular No. 617, p. 998.

12.[4] When the drainage charges are paid at the district land office the receiver to whom the money was paid shall transmit to the treasurer of the county where the land is situated the amount for which the land was sold at the sale for drainage charges, together with the interest paid thereon, if any, less any sum in excess of what may be due for such drainage charges if the land when sold was unentered.

If the lands are Indian lands you will deposit the price paid for the land to the credit of the appropriate Indian fund, either Red Lake, where the lands were opened under the act of February 20, 1904, (33 Stat. 46), or Chippewa, as to all other Indian lands. The 3 cents per acre drainage charge should all be deposited to the credit of the Chippewa permanent fund, as the same is intended to reimburse the Chippewa fund for appropriations made therefrom to pay the expense of preliminary drainage surveys of former Red Lake lands.

13. Purchasers of land under the act in question are required to have the qualifications of a homestead entryman, and not more than 160 acres can be sold to any one purchaser. The tracts must be entered by legal subdivisions, but they need not be contiguous or in one body.

14. A person who has made a homestead entry for 160 acres has exhausted his homestead right, unless his right is restored by act of Congress. He will not be permitted to relinquish an existing homestead entry and make entry under the Minnesota drainage laws, unless it can be satisfactorily established that he made his homestead entry in good faith for the purpose of securing a home; that he has honestly endeavored to comply with the homestead laws, and, if assessed for drainage, that he has paid the drainage charges due on the relinquished entry, and is entitled by law to make a second homestead entry. A person who makes a homestead entry for land advertised for sale for drainage charges will not be permitted, unless the circumstances be exceptional, to file a relinquishment of his entry and to make an entry under the Volstead Act. The showing required to be made must be in the form of the entryman's affidavit, corroborated by two witnesses, which you will forward to this office for instructions.

15. An additional entry may be made for an amount which does not exceed 160 acres, including that previously entered, provided that his previous entry did not exhaust his homestead right; in other words, he may purchase such amount as he might then have entered under the homestead laws, and without regard to the location of the land previously entered. He need not necessarily have submitted proof on his original entry in order to be entitled to exercise his additional homestead right under the act of May 20, 1908.

16. The amount of land which may be purchased by any person will be affected by the provision in the act of August 30, 1890 (26 Stat. 391), limiting the amount of land to which title may be acquired by any one person under the agricultural public land laws to 320 acres.

17. Persons who are the owners of more than 160 acres are not qualified to make a homestead entry in the State of Minnesota and

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[4] See amendment, p. 996.

therefore would not be qualified to purchase land at a sale of lands under said act of May 20, 1908. It is held by the department that a person purchasing land under a contract giving him right to acquire title, acquisition of which depends only on his own performance or default, is owner of such land and proprietor of it within the meaning and intent of section 2289, United States Revised Statutes. (See cases of Smith *v.* Longpre, 32 L. D. 226, and Boyce *v.* Burnett, 16 L. D. 562.)

18. Purchasers at any sale by the State under the act may make their purchases by agent or attorney to the extent permitted by the State drainage laws of sales of lands held in private ownership.

19.[5] Affidavits as to qualifications or as to the status of lands which may be required of purchasers under these regulations may be executed before an officer authorized to administer oaths in homestead cases. The affidavit as to the nonsaline character of the land can not be made on information and belief. This affidavit, however, may be made by a reliable party who has actual knowledge of the facts. (See case of Mendenhall *v.* Howell et al., 14 L. D. 461.)

20. It is the duty of the State officials under section 4 of the act to furnish to the proper register and receiver, immediately after the close of the sale, a statement showing the price at which each legal subdivision was sold. This statement should give the names of the purchasers and their addresses, if possible, and should also include lands bid in by the State.

When such statement has been filed in your office in accordance with the provisions of section 4 of the act, you will at once make proper notes thereof on the records of your office and also furnish this office a copy of such statement.

21. The law makes no provision for the redemption of lands by a mere settler, and therefore only entrymen have the right to pay to the county officials the drainage charges prior to the sale of land for nonpayment of such charges.

22.[6] To avoid confusion, misunderstanding, and conflict of rights it is hereby provided that no right of redemption, referred to in section 6 of the act, can be acquired by settlement on or application for lands subject to entry after the hour and date fixed for their sale. You will suspend all applications for lands advertised for sale under said act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the act is received, unless the applicant shall show by affidavit, duly corroborated, that he settled on the land in good faith prior to the beginning of the sale, for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry the homestead application may then be allowed. If the statement does not show a sale of the land, or it was bid in by the State, the homestead application may be allowed. In either case payment of the drainage charges will be required, and the homestead entryman will be required to comply with the homestead laws in the matter of residence, improvements, and cultivation, in addition to paying the State drainage charges.

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[5] See amendment, p. 998.

[6] See amendment, p. 1001.

23.[7] After the expiration of 90 days from the date of sale the lands will be subject to ordinary homestead entry, in which case residence, improvements, and cultivation are required, the entryman paying the drainage charges, or to entry under the act of May 20, 1908, which does not require such compliance with the homestead law.

24. There is no provision in the law which requires residence on the land purchased under the act, or cultivation or improvement thereof.

25. In case a purchaser at a tax sale of entered but unpatented land should find that the entryman had not complied with the land laws as to settlement, improvements, and cultivation, and such purchaser should secure the cancellation of the entry as a result of his contest, he would then have the right to acquire title to the land upon making payment and showing his qualifications as provided in the foregoing rules.

26. In case payment is made as above specified you will issue the usual cash certificates and receipts and forward the papers to this office, together with evidence showing the qualifications of the purchaser on the form provided therefor. Should no objection appear patent will issue in due course of business.

27. Section 5 of the act provides for the issuance of patent for unentered land to qualified purchasers at any time after the sale when the proper payments have been made. Therefore no notice of the expiration of the statutory period of redemption is required to be given the United States; but in view of the fact that settlement on the land is permitted and a settler has three months from date of settlement within which to place his entry of record no patent will issue upon such purchase until at least three months after the date of purchase unless the purchaser will furnish his affidavit showing positively that no one is claiming the land by reason of settlement or occupancy initiated prior to the date of purchase. Purchasers of entered but unpatented lands will be required to give the notices of redemption required by the State drainage laws, but the usual final-proof notice required of homesteaders need not be given.

28. The act makes no mention of, nor reference to, assignments of drainage-tax certificates or rights acquired at any sale of land for nonpayment of a State drainage assessment. It is held, however, that a purchaser at a sale may waive his right to enter the land.

29. The United States and all persons legally holding unpatented lands under entries made under the public land laws of the United States are entitled to all the rights, privileges, and benefits given by said laws to persons holding lands of a like character in private ownership. A copy of all notices required by the State drainage laws to be given to the owners or occupants of lands held in private ownership is required by section 7 of the act to be given the register and receiver of the proper land district in cases where unentered lands are affected, and to entrymen whose unpatented lands are affected thereby. The United States and such entrymen have the same rights to be heard by petition, answer, remonstrance, appeal,

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[7] See amendment, p. 1001.

or otherwise as are given to persons holding lands in private ownership; and all entrymen shall be given the same rights of redemption as are given to the owners of land held in private ownership.

30. Section 8 of the act provides that entries and proofs may be made and patents issued for all ceded Chippewa lands (except in the Red Lake Reservation) which were withdrawn under the act of June 21, 1906 (34 Stat. 325), in the same manner in which entries, proofs, and patents for other lands are made and issued under the homestead laws, subject to the payment of the purchase price fixed by law for such lands. Persons making final proofs on entries in the Red Lake Reservation will be required to pay 3 cents per acre in addition to the purchase price originally fixed by law, except in cases where entry was made prior to November 10, 1906, the date of the withdrawal under said act of June 21, 1906.

31. You will note on the application and receipt in all entries hereafter made the following: " Subject to act of May 20, 1908."

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

(Form and act omitted.)

[Reported, 45 L. D. 623]

MINNESOTA DRAINAGE LAWS—AMENDMENT—ACT OF SEPTEMBER 5, 1916

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 26, 1917.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

SIRS: Your attention is invited to the provisions of the act of September 5, 1916 (39 Stat. 722), copy hereto attached, which amends sections 5 and 6 of the act of May 20, 1908 (35 Stat. 169), known as the Minnesota drainage laws. The act amends section 5 of said drainage law by omitting the following sentence:

> Any part of the purchase money arising from the sale of any lands in the manner and for the purposes provided in this act which shall be in excess of the payment herein required and of the total drainage charges assessed against such lands shall also be paid to the receiver before patent is issued.

In lieu thereof, there is now inserted the following sentence:

> Any part of the purchase money arising from the sale of any lands in the manner and for the purposes provided in this act which shall be in excess of the drainage charges then delinquent shall be paid to and used by the county in which such land is located for the purpose of maintenance, improving and extending such drainage works within the area benefited by the drainage project in which such land shall have been assessed for such drainage charge.

Section 6 of the act is amended by substituting the word " entered " for the word " unpatented " as the third word of said section. It further amends the next to the last sentence of the section with reference to the amounts to be paid by persons who desire to become subrogated to the rights of purchasers at a sale of the lands, by substituting in place of the following provision found in the original act—

> First, the unpaid fees, commissions, and purchase price to which the United States may then be entitled; and second, the sum at which the land was sold at the sale for drainage charges, and in addtion thereto, if bid in by the State, interest on the amount bid by the State at the rate of 7 per cent per annum from the date of such sale, and thereupon the person making such payment shall become subrogated to the rights of such purchaser to receive a patent for said land. When any payment is made to effect such subrogation the receiver shall transmit to the treasurer of the county where the land is situated the amount at which the land was sold at the sale for drainage charges, together with the interest paid thereon, if any, less any sum in excess of what may be due for such drainage charge, if the land when sold was unentered.

the following:

> First, the unpaid fees, commissions, and purchase price to which the United States may then be entitled; and, second, the sum due at the sale for drainage charges; and, in addition thereto, if bid in by the State, interest on the amount bid by the State at the rate of 7 per cent per annum from the date of such sale, and thereupon the person making such payment shall become subrogated to the rights of such purchasers to receive a patent for said land. When any payment is made to effect such subrogation the receiver shall transmit to the treasurer of the county where the land is situated the amount paid for drainage charges, together with the interest paid thereon.

The amendments relate to the disposition of the excess bid by purchasers at a sale of the lands by the county auditors. Under the law as originally enacted, the excess in the case of entered lands went to the entryman, but in the case of unentered lands, the excess or bonus, in accordance with the construction placed upon the law by the department, went into the Treasury, to the credit of the United States, or the Chippewa Indians, as the case may be. Under the law as amended, the excess in the case of unentered lands is to be used by the county in which the land is located for the purpose of maintenance, improving, and extending the drainage works as set forth in the amended law.

Both the original law and the amended law make a distinction between the drainage charges and the excess. The excess is in the nature of a bonus and under the amended law is not to be collected by you. It should be collected by the county auditor at the time of sale.

The instructions under the Minnesota drainage law found in 45 L. D., page 40, are accordingly amended with reference to paragraphs numbered 6, 11, and 12, to agree herewith. You will be governed accordingly in future entries under this law.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

(Act omitted.)

[Reported, 46 L. D. 419]

CIRCULAR No. 605½

AMENDMENT OF MINNESOTA DRAINAGE REGULATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 28, 1918.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

SIRS: Paragraph No. 19 of the circular of instructions No. 470 of April 15, 1916 (45 L. D. 40), issued under the act of May 20, 1908 (35 Stat. 169), is amended to read as follows:

> 19. Affidavits as to qualifications or as to the status of lands which may be required of purchasers under these regulations may be executed before an officer authorized to administer oaths and having a seal, or where such purchasers are in actual service in the military or naval service of the United States the affidavits may be made before the officer commanding in the branch of the service in which the party is engaged. The affidavit as to the nonsaline character of the land can not be made on information and belief. This affidavit, however, may be made by a reliable party who has actual knowledge of the facts. See case of Mendenhall *v.* Howell et al. (14 L. D. 461).

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER VOGELSANG,
First Assistant Secretary.

[Reported, 46 L. D. 438]

CIRCULAR No. 617 [8]

MINNESOTA DRAINAGE—PROCEEDINGS AFTER EXPIRATION OF PERIOD OF REDEMPTION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 13, 1918.

REGISTERS AND RECEIVERS,
Cass Lake, Crookston, and Duluth, Minn.

SIRS: This office is in receipt of letters inquiring (*a*) as to the proper procedure to obtain patent, under the act of May 20, 1908 (35 Stat. 169), to entered lands where the period of redemption has expired, and the entryman has failed to redeem his land from the tax judgment; (*b*) whether the patents in the case of entered lands will issue in the name of the entryman who has failed to redeem his land, or in the name of the purchaser under section 6 of said act; and (*c*) whether such purchaser is required to have the qualifications of a homestead entryman.

Under authority of section 7 of said act of May 20, 1908, and the drainage and tax laws found in the general statutes of Minnesota, compiled edition of 1913, and amendments thereof, the following regulations will govern in cases where purchasers of entered lands, sold for nonpayment of the drainage charges at a tax sale and not redeemed, desire to make entry of and secure patent to the lands under section 6 of the act of May 20, 1908, viz:

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[8] See Circular No. 969, p. 1000.

After the expiration of three years and not exceeding six years from the date of the tax judgment sale the person holding a tax certificate of sale must present such certificate to the county auditor, who will prepare a notice, directed to the person in whose name the lands are assessed, specifying the lands, the amount for which they were sold, the amount required to redeem them, exclusive of costs, and the time when the redemption period will expire. The auditor will deliver the notice to the party applying therefor, who in turn will deliver the notice to the sheriff of the proper county for service. Within 20 days after its receipt by him the sheriff is required to serve notice upon the party to whom it is directed, if to be found in the county, and if not so found, then upon the person in possession of the land; if the person to whom the notice is directed can not be found in the county, and there is no one in possession of the land, the service shall be made by three weeks' publication. The sheriff is required to make his return to the county auditor, to whom evidence of publication, when made, should be furnished. The county officers are entitled to the customary fees for their services. The full period of redemption does not expire until 60 days shall have elapsed after the service of such notice and proof thereof has been filed.

The certificate of the county auditor under his official seal, after the expiration of the 60-day period mentioned above, that the entryman has been duly notified in accordance with the laws of the State of Minnesota of the amount for which the lands which should be described were sold, the amount required to redeem the same, and the time when the redemption period expires shall be deemed satisfactory evidence that proper service of notice was made, and upon receipt of such certificate in your office you will cancel the entry upon the records of your office as to the date of such receipt. Note the fact of such cancellation upon the certificate of the auditor over the register's signature, referring in each case to this letter as authority therefor, note the serial number of the entry on each certificate, and forward said certificate with your monthly returns.

Within 90 days after the expiration of the 60-day period, or after the full period of redemption has expired, the purchaser may make entry of the lands, upon furnishing the certificate of the county auditor mentioned above and affidavit as to the character of the land, and making the required payments. Should the purchaser fail to make entry of the lands within 90 days from the expiration of the full period of redemption mentioned, any other person, upon furnishing said certificate of the auditor of the county, may secure the cancellation of the entry and be allowed to make entry in his own name upon making the payments specified in section 6 of the act of May 20, 1908, showing his qualifications and furnishing an affidavit as to the character of the land. The price of the land to be paid by a purchaser of entered lands is $1.25 per acre, or such other price as may have been fixed by law for such lands, less so much thereof as has already been paid by the entryman, in addition to the usual fees and commissions. In the case of subrogation the applicant is also required to pay the sum at which the land was sold at the sale for drainage charges, with interest where chargeable.

If an entryman fails to redeem his land, and an entry thereof is made under the act of May 20, 1908, patent in such case will issue in the name of the purchaser under the act last mentioned.

Section 6 of the act of May 20, 1908, contains no requirement that a purchaser at a tax sale of entered lands shall have the qualifications of a homestead entryman, and no limitation as to the acreage which such purchaser may enter, and no such qualifications or limitation will be required where such purchaser makes entry at your office of the lands purchased. If such purchaser does not make entry, after giving notice to the entryman, a person who desires to become subrogated to the rights of said purchaser of entered lands must, under said section 6, have the qualifications of a homestead entryman, and the right of entry is limited to 160 acres.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

S. G. HOPKINS, *Assistant Secretary.*

[Reported, 50 L. D. 685]

CIRCULAR NO. 969

INSTRUCTIONS UNDER THE MINNESOTA DRAINAGE LAWS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 9, 1924.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

GENTLEMEN: The following instructions are issued under the act of May 20, 1908 (35 Stat. 169), known as the Volstead Act, being supplemental to Circular of Instructions No. 470, approved April 15. 1916 (45 L. D. 40), and the instructions dated August 13, 1918 (46 L. D. 438), relating to proceedings after expiration of the period of redemption.

September 4, 1924, the State auditor of Minnesota was asked for an opinion upheld by decisions rendered by the courts of said State bearing upon the question of whether an entryman under certain circumstances specified in the letter has the right of redemption under the State laws relative to taxation. October 7, 1924, the Assistant Attorney General of Minnesota, to whom this matter was referred by the auditor, rendered an opinion covering the points in question. From the acts of the State of Minnesota bearing on this matter and the decisions of the State courts referred to, it is found that evidence of redemption must be furnished in cases where land has been sold for drainage charges under the act of May 20, 1908:

(1) When the State is a purchaser and there has been no assignment.

(2) When the State purchased the land, but later assigned it and six years have not expired since date of assignment.

(3) Where there is an actual purchaser, and six years have not expired since date of sale.

In the future you will reject any and all applications for homestead entry subject to the act of May 20, 1908 (35 Stat. 169), where evidence of redemption is required if the same is not filed in connection therewith.[9]

Very respectfully,

William Spry, *Commissioner.*

Approved December 9, 1924.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 83]

Circular No. 989

INSTRUCTIONS UNDER THE MINNESOTA DRAINAGE LAWS—AMENDING CIRCULAR NO. 470 (45 L. D. 40), AND CIRCULAR NO. 969 OF DECEMEBER 9, 1924

Department of the Interior,
General Land Office,
Washington, April 1, 1925.

Registers and Receivers, Cass Lake, Crookston, and Duluth, Minn.

Gentlemen: Paragraphs Nos. 22 and 23 of Circular No. 470 (45 L. D. 40), are amended to read as follows:

22. To avoid confusion, misunderstanding, and conflict of rights, it is hereby provided that no right of redemption referred to in section 6 of the act can be acquired by settlement on or application for lands subject to entry after the hour and date fixed for their sales. You will suspend all applications for lands advertised for sale under said act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the act is received, unless the applicant shall show by affidavit duly corroborated that he settled on the land in good faith prior to the beginning of the sale for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry, the homestead application may then be allowed. If the statement does not show a sale of the land or it was bid in by the State, the homestead application may be allowed. Payment of drainage charges will not be required and you will formally notify each applicant making a 3-year homestead entry where the land has been sold for delinquent drainage charges and evidence of redemption has not been furnished, the amount of taxes assessed against said land and of any tax certificates outstanding thereon, and you will file with the application a carbon copy of said letter. The homestead entryman will be required to comply with the homestead law in the matter of residence, improvements, and cultivation.

23. After the expiration of 90 days from the date of sale, the lands will be subject to ordinary homestead entry, in which case residence, improvements, and cultivation are required, or to entry under the act of May 20, 1908, which does not require such compliance with the homestead law.

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[9] Amended by Circular No. 989, p. 1001.

The last paragraph of Circular No. 969, dated December 9, 1924, is amended to read:

> You will reject all cash entries under the act of May 20, 1908 (35 Stat. 169), where evidence of redemption is required if the same is not filed in connection therewith.

The effect of the changes now made in Circulars Nos. 470 and 969 is to provide for the payment of delinquent drainage charges as a condition precedent to the allowance of an application in the case of cash purchases only; and in the case of ordinary homestead entries the register and receiver are required to formally advise the applicant of the drainage taxes due on his entry and the tax certificates outstanding thereon, a carbon copy of said notice to be filed with the application.

Very respectfully,

William Spry, *Commissioner.*

Approved April 1, 1925.

E. C. Finney,
First Assistant Secretary.

Circular No. 1039

RESTORING TO ENTRY LANDS RESERVED FOR RESERVOIR PURPOSES

Department of the Interior,
General Land Office,
Washington, November 9, 1925.

Register, Cass Lake, Minn.

Sir: Your attention is called to the act of August 6, 1914 (38 Stat. 683), which provides for the restoration to the public domain, subject to homestead entry, of certain lands heretofore withdrawn by Executive order in connection with the construction, maintenance, and operation of reservoirs at the headwaters of the Mississippi River and its tributaries, the restoration of which the Secretary of War has recommended or may hereafter recommend to the Secretary of the Interior. A copy of said act is hereto attached.

2. The following-described lands affected by the act in question and which have been recommended for restoration to the Secretary of the Interior by the Secretary of War are hereby restored to settlement and entry at your office under the terms and conditions of said act, and these regulations.

(List of lands omitted.)

3. Subject to the rights of settlers herein provided for qualified ex-service men of the World War with Germany by virtue of Public Resolution No. 29, approved February 14, 1920 (41 Stat. 434), as amended by Public Resolutions Nos. 36 and 79, approved January 21 and December 28, 1922 (42 Stat. 358 and 1067), respectively, will be allowed a preferred right to enter and file on said lands under the homestead laws for a period of 91 days, beginning with the 28th day from the date hereof. Qualified ex-service men should file certified copies of their certificates of discharge or sworn statements as to their military service, and regardless of the specific service

relied upon to support a preference right, such applicants must show, by their affidavits, whether they were ever drafted for service under the provisions of the selective service act and refused to render such service or to wear the uniform of such service of the United States. Affidavit must also be made that the land is not claimed or occupied by anyone who became a settler thereon prior to January 1, 1914.

4. Persons who have made actual settlement on any of said lands prior to January 1, 1914, and made improvements thereon have, under section 3 of the act, a preferred right to enter and file on said lands under the homestead laws for a period of 90 days, such period to run simultaneously with the first 90 days of the 91-day soldier's preference right period herein provided for. Persons claiming such preference right must file with their homestead applications, affidavits showing the date settlement was made, and improvements placed upon the land claimed, and setting out the value and character of such improvements. Such settlers may avoid confusion by filing their applications within the 20-day simultaneous filing period hereinafter provided for, although they are not required to do so.

5. Under section 4 of the act no rights of any kind except as specified in the foregoing paragraph shall attach by reason of settlement or squatting upon any of the land restored to entry prior to 9 a. m., on the date the land becomes subject to homestead entry by the general public and until said time no person shall enter upon and occupy the same except in cases mentioned in the foregoing paragraph, and any person violating this provision shall never be permitted to enter any of said lands or acquire title thereto.

6. After the 91-day period fixed in paragraph 3 hereof, during which ex-service men are entitled to make entry any lands remaining unentered will be subject to homestead entry by the general public.

7. For the period of 20 days prior to the restoration or opening of such lands to soldiers' and settlers' entries and for a like period prior to the date such lands become subject to entry by the general public, soldiers and sailors in the first instance and any qualified applicants in the second may execute and file their application and all such applications presented within such 20-day periods, together with those offered at 9 a. m., standard time, on the dates such lands become subject to appropriation under such applications, shall be treated as filed simultaneously and will be disposed of in the manner prescribed by Circular No. 324 of May 22, 1914 (43 L. D. 254), so far as applicable. All other applications presented as herein prescribed will be received, noted, and acted upon in the order of their filing.

8. In the event an entry is allowed on the application of an ex-service man, and thereafter within the 90-day settlers' preference right period an application is filed by a person claiming preference right under paragraph 4 hereof, and such application is in conflict with such allowed entry, you will require the entryman within 30 days from notice to show cause why his entry should not be canceled to the extent of such conflict, and to serve a copy of such showing upon the settlement preference right applicant, proof of which service must be furnished. Thereafter the settler preference right applicant will be allowed 30 days within which to file an answer to such showing and serve a copy of such answer upon the entryman,

proof of which service must be furnished. On such showing and answer you will submit the matter to this office with your recommendation.

9. Section 2 reserves to the United States the right to overflow the lands restored, or any part thereof, by existing reservoirs, or any which may hereafter be constructed, and provides that all patents for the lands restored shall expressly reserve to the United States such rights of overflow. You will therefore indorse on all homestead entries allowed by you for these lands the following:

Subject to the right of the United States to overflow. See section 2, act of August 6, 1914 (38 Stat. 683).

10. You will post a copy of these regulations in your office in a conspicuous place and allow it to remain until after the date above specified, and you will furnish copies hereof to the various postmasters in your district, and to newspapers for insertion by them as a matter of news without expense to the Government. You will also transmit copies hereof to any persons known by you to be settlers upon any of the lands in question.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved November 9, 1925.

E. C. FINNEY,
First Assistant Secretary.

(Memorandum of dates and act omitted.)

NATIONAL FORESTS

CIRCULAR No. 305

CANCELED ENTRIES WITHIN FOREST RESERVES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 7, 1914.

Registers and Receivers, United States Land Offices.

SIRS: You are advised that on the 4th instant the Secretary of the Interior issued the following order:

> Whenever, after due procedure under the law and the rulings of this department, any entry within an existing forest reserve has been canceled by order of this department, it will hereafter be held that such matter is closed, and is not subject to subsequent motion or order before or by the department.

The order of the Secretary will be held applicable to an entry within a forest reserve regularly canceled by this office in the absence of an appeal and hereafter no such entry will be reinstated by direction of this office.

You are directed, where practicable, to call the attention of attorneys practicing before your offices to the foregoing orders.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 410 [1]

MISCELLANEOUS—CLASSIFIED SCHEDULE REPORTING CHANGE OF STATUS OF ENTRIES WITHIN NATIONAL FORESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 10, 1915.

Registers and Receivers, United States Land Offices.

SIRS: The Forest Service has called the attention of this office to the fact that the schedule required by Circular No. 105 [a] (par. 53), to be furnished each month to the district foresters fails to contain sufficient information to enable the forest supervisors to keep an accurate record of the changes which take place of the status of lands within their forests, and that some local offices fail to promptly transmit said schedule at the end of each month.

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[1] Modified by Circular No. 417, p. 1006.

[a] Circular No. 105 has been superseded by Circular No. 616. See par. 52, of latter circular, p. 60.

Hereafter the schedule must show in each instance serial number, kind of entry, and whether original or final, name of entryman, description of land, and date of action. Observe care to show whether the action is the allowance or cancellation of an entry. List numbers under the act of June 11, 1906, and numbers of receiver's receipts need not be shown. The report should appear as follows:

May 3, 016009, Hd. (orig.), James E. Houston, NE. ¼ SW. ¼, sec. 6, T. 8 S., R. 23 E.—Allowed.

May 9, 014800, Hd. (orig.), William H. Murray, S.½ SE.¼, sec. 8, T. 19 N., R. 30 W.—Relinquished.

May 11, 013906, mineral (final), Robert Thompson, NW.¼ SE.¼, SW.¼ NE.¼, sec. 9, T. 14 S., R. 25 E.—Final certificate issued.

May 25, 015326, DLE (orig.), Henry Dawson, S.½, sec. 5, T. 9 N., R. 40 W.—Canceled by G. L. O.

The schedule in question must be transmitted to the district foresters promptly at the end of each month.

Please acknowledge receipt hereof on inclosed postal card.

Very respectfully,

Clay Tallman, *Commissioner.*

Circular No. 417

MISCELLANEOUS—CLASSIFIED SCHEDULE REPORTING CHANGE OF STATUS OF ENTRIES WITHIN NATIONAL FORESTS—AMENDING CIRCULAR NO. 410

Department of the Interior,
General Land Office,
Washington, June 21, 1915.

Registers and Receivers, United States Land Offices.

Sirs: Circular No. 410, May 10, 1915, instructed you that list numbers under the act of June 11, 1906, need not be shown upon the schedule required by Circular No. 105[a] (par. 53), to be furnished each month to the district foresters.

Where an entry under act of June 11, 1906, embraces unsurveyed lands, described by metes and bounds, it is often difficult for the district foresters to identify the land involved in the absence of list numbers. Hereafter, in such cases, please show list numbers as well as serial numbers on said schedule which, together with the number of township and range, will be sufficient description for complete identification.

* * * * * * *

Very respectfully,

Clay Tallman, *Commissioner.*

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[a] Circular No. 105 has been superseded by Circular No. 616. See par. 52, of latter circular, p. 60.

[Reported, 44 L. D. 360]

CIRCULAR NO. 435

LANDS WITHIN NATIONAL FORESTS—PRACTICE—JOINT REGULATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 4, 1915.

To Registers and Receivers and Chiefs of Field Divisions:

The appended regulations will be effective on and after October 1, 1915.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

WASHINGTON, D. C., *August 5, 1915.*

To the Commissioner, Chief of Field Service, Chiefs of Field Divisions, Registers and Receivers, General Land Office, Department of the Interior; the Forester, District Foresters, Forest Service, the Solicitor, and District Assistants to the Solicitor, Department of Agriculture.

GENTLEMEN: Better to effectuate cooperation in protecting the interests of the Government and settlers and other claimants to lands within national forests, the following order is made, effective on and after October 1, 1915, superseding order of November 25, 1910 (39 L. D. 374):

1. Hereafter when a person files application to make entry, or to amend an existing entry, embracing lands within a national forest, basing the right of entry, or amendment, on settlement prior to the establishment of the forest, the register and receiver will require such person to file with his application a statement under oath, in duplicate, containing his name and address, description and character of the land involved, the date he established residence on the land, his absence from the land, kind and character of improvements placed thereon, and the amount of land cleared and cultivated, accompanied by the affidavit, in duplicate, of at least one disinterested person, corroborating the statement. The register and receiver will immediately forward the duplicate of such statement and affidavit to the supervisor of the national forest in which the lands are embraced, within information as to the date of filing the application, the date of filing the township plat of survey covering the land, and any other facts of record affecting the application, and will suspend action on the application for 60 days, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest, as hereinafter provided.

2. The register and receiver in issuing notice of intention to make final proof upon claims, either mineral or nonmineral, within a national forest shall immediately furnish a copy thereof to the

supervisor in charge of such forest, and other than to publish such notice and receive final proof will, except in mineral cases as hereinafter prescribed, suspend action on the final proof for 60 days from date thereof, or upon the request of the forest supervisor, where climatic or other conditions require, for such time, not to exceed six months, as will enable him to make an examination of the claim, unless in the meantime they shall receive notice of no protest as hereinafter provided. In each case, however, where the register and receiver, upon examination of the final proof at any time after its submission, find it to be incurably defective, the same will be rejected and the Forest Service so advised, notwithstanding the time within which a protest may be filed hereunder has not expired.

3. The forest supervisor upon receipt of the statement mentioned in paragraph 1, or the notice mentioned in paragraph 2, will at once make investigation of the claim, and will submit to the district forester a report thereon, unless immediate investigation is impossible because of climatic or other conditions, when an extension of time will be requested as provided in paragraphs 1 and 2 hereof, and the investigation will be made and the report submitted as soon as possible within the period of extension. The district forester will promptly consider the report, and if of opinion that no protest should be filed will so advise the register and receiver. If the district forester is of opinion that a protest should be made, he will transmit the papers to the district assistant to the solicitor, who will prepare for his signature a protest, not under oath or corroborated, in which shall be plainly and briefly stated the grounds upon which the protest is based. The protest shall be filed in triplicate with the register and receiver of the proper local land office.

4.[2] Upon receipt of the protest, the register and receiver shall immediately forward a copy thereof to the Commissioner of the General Land Office, in accordance with rule 4 of the Rules of Practice, and in every case immediately issue the notice required by rule 5 thereof, accompanied by a copy of the protest, stating that unless the adverse party appears and answers the allegations of said notice within 30 days after service thereof, the allegations of the protest shall be taken as confessed. Upon the filing of the answer, the register and receiver shall set a date for a hearing, after consultation with the district assistant to the solicitor, and notify parties as provided in the Rules of Practice. Upon failure of the claimant to appear at the hearing the allegations of the protest will be taken as confessed. Hearings shall be conducted in accordance with the Rules of Practice. In other than mineral cases, action upon the application and upon the final proof, which may be offered in the usual manner, shall be suspended pending the final determination of the protest, except as provided in paragraph 2 hereof for the disposition of incurably defective proof. In mineral applications for patent the proof shall be considered on its merits, and, if found regular, certificate issued, but the claimant should be advised in such case that patent will be withheld by the General Land Office pending determination of the protest.

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[2] Construed by Circular No. 464, p. 1012.

5. If no protest be filed within the time limit as provided in paragraphs 1 and 2 hereof, the register and receiver shall take appropriate action upon the application or the final proof. But in no case, in the absence of the filing of a protest or a no protest notice as hereinabove provided, shall patent issue until the Commissioner of the General Land Office is notified by, or ascertains from, the forester that the claim will not be protested, as provided in paragraph 6 hereof.

6. A protest may be initiated against any claim, mineral or nonmineral, embracing lands within national forests at any time prior to patent, by the solicitor or the district assistant to the solicitor of the Department of Agriculture filing in the local land office, in triplicate, a complaint signed by the forester or the district forester, not under oath or corroborated, setting forth clearly and briefly the grounds of the protest. Upon receipt of such complaint the register and receiver shall forward a copy thereof to the Commissioner of the General Land Office; issue the notice required by rule 5 of the Rules of Practice, accompanied by a copy of the complaint; and arrange for a hearing, if applied for, as provided in paragraph 4 hereof.

7. In all hearings affecting lands or claims within a national forest the district assistant to the solicitor will be entered of record as appearing in behalf of the Government, and will conduct the Government's side of the case.

8. Forest lieu and school selection cases will be handled by the chiefs of field division of the General Land Office in like manner as heretofore. The forest officers will, upon request of the chiefs of field division, render any assistance possible in the making of investigations, and the district assistants to the solicitor of the Department of Agriculture will cooperate with the chiefs of field division in the conduct of hearings in such cases, and thereafter will take action in like manner as heretofore, including the taking of appeals to the Secretary of the Interior.

9. In all Government cases before registers and receivers involving lands or claims within a national forest, the district assistant to the solicitor shall be served with copies of all answers, appeals, motions, orders, and decisions required to be noted under the rules in cases of private contests. The proper law officers of the Department of Agriculture shall also have a right of appeal from any decision by the Commissioner of the General Land Office and to file motion for rehearing in the Department of the Interior, or take other like action in the same manner as a private contestant, and shall receive like notices of proceedings and decisions: *Provided, however*, That the Department of Agriculture shall not be required to take formal appeals from decisions of registers and receivers.

10. Chiefs of field divisions and special agents will not hereafter take action in regard to any claims within a national forest, except as provided in paragraph 8 hereof, unless specifically directed by the Commissioner of the General Land Office or the Secretary of the Interior: *Provided*, That chiefs of field divisions may, on request of a district forester, assign mineral examiners to assist in the investigation of cases involving mining claims.

11. Costs of hearings will be paid from the appropriation for expenses of hearings in land entries as now provided for other Gov-

ernment contests. Prior to June 1 of each year the district assistant to the solicitor will mail to the chief of field division in whose division the lands involved lie an estimate of the funds necessary to cover the hearings during the first quarter of the ensuing fiscal year. Like action will be taken on the first day of each month which immediately precedes the other quarters of the fiscal year. Such estimates should be accompanied by a list of the cases to be heard, which should include the names of claimants, local land office, and serial number of entry or application, and character of entries or filings. The chief of field division will transmit the lists and estimates received from the district assistant to the solicitor to the Commissioner of the General Land Office at the same time he submits his estimates for hearings involving lands in his district outside of national forests. When these lists and estimates are received in the General Land Office the appropriation will be allotted for the quarter, and each chief of field division will be advised of the amount which will be allowed for forest cases, and he will advise the district assistant to the solicitor thereof. Payment for the expenses of hearings from the appropriation so allotted will be made by special disbursing agents upon proper vouchers, as is now provided for Government contests in cases outside of national forests, but such vouchers must be approved by the district assistant to the solicitor and by the chief of field division before payment is made.

Respectfully,

FRANKLIN K. LANE,
Secretary of the Interior.
D. F. HOUSTON,
Secretary of Agriculture.

CIRCULAR No. 442

FOREST TELEPHONE LINES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 9, 1915.

Registers and Receivers, United States Land Offices:

SIRS: The department, August 31, 1915, issued the following instructions:

> In cases where telephone lines or like structures have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and your office is furnished with appropriate maps or field notes by the Department of Agriculture so prepared to enable you to definitely locate the constructed line, proper notation thereof should be made upon the tract books of your office, and if the land be thereafter listed or disposed of under any applicable public-land law, you should insert in the register's final certificate and in the patent, when issued, the following exception:
>
> "Excepting, however, from this conveyance that certain telephone line and all appurtenances thereto constructed by the United States through, over, or upon the lands therein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States."

In compliance with such instructions, you will, upon issuing final or cash certificate for lands shown by the records of your office to be crossed or affected by constructed telephone lines, operated or controlled by the Forest Service, inscribe or stamp upon such final or cash certificate the legend hereinbefore quoted, specifically calling the attention of the entryman or applicant to such notation.

Very respectfully,

D. K. PARROTT,
Acting Assistant Commissioner.

[Reported, 44 L. D. 513]

ROADS, TRAILS, BRIDGES, ETC., IN NATIONAL FORESTS—EXCEPTION IN PATENTS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, January 13, 1916.

JONES, *First Assistant Secretary:*

I am in receipt of your (Secretary of Agriculture) letter of November 4, 1915, referring to the instructions of this department, dated August 31, 1915 (44 L. D. 359), to the Commissioner of the General Land Office, concerning constructed Forest Service telephone lines crossing lands within national forests and listed and entered under the homestead law of June 11, 1906. The Commissioner of the General Land Office was there instructed as follows:

> In cases where telephone lines or like structures have been actually constructed upon the public lands of the United States, including national forest lands, and are being maintained and operated by the United States, and your office is furnished with appropriate maps or field notes by the Department of Agriculture so prepared as to enable you to definitely locate the constructed line, proper notation thereof should be made upon the tract books of your office and if the land be thereafter listed or disposed of under any applicable public-land law, you should insert in the register's final certificate and in the patent when issued the following exception:
>
> "Excepting, however, from the conveyance that certain telephone line and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described, and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States"

In your present communication you refer to the appropriation act of March 4, 1915 (38 Stat. 1100), containing the following provision:

> For the construction and maintenance of roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection and development of the national forests, $400,000—

and state as follows:

> This act provides for the construction of such improvements of the foregoing class as may be necessary for the purpose already enumerated, and provides as well for the maintenance of those which are already constructed. The expenditure of money from this subappropriation, in accordance with its provisions, would appear to me directly to result in devoting to public purposes the land upon which such money is expended. This expenditure may be

> either for construction or maintenance. One of the first and most desirable things, either for construction or maintenance, is definite location by means of survey. I see no reason why the expense of such survey should not be charged against the subappropriation quoted, and it would appear to me that such expenditure would in itself be sufficient to devote the land to public purposes as being "necessary for the purpose of proper and economical administration, protection, and development of the national forests."
>
> I shall appreciate it if you will advise me whether in the case of such expenditure and the subsequent listing of the land, your department has authority to include such an exception in the final certificate and patent, provided at the time of listing you are furnished with evidence of the fact that a certain part of the land has been so devoted to public purposes, accompanied by the necessary tracings showing the location and extent of such appropriation.

I am of the opinion that the same reasoning as was adopted in the department's instructions of August 31, 1915, to the Commissioner of the General Land Office, relative to telephone lines constructed under authority of similar appropriation acts applies to the other kinds of improvements mentioned in the above act of March 4, 1915; and that similar exceptions as to lands needed for such improvements may be inserted in the register's final certificate, and in the patent when issued. Your communication, however, would appear to take the view that a mere preliminary survey is sufficient as a devotion of the land to the public use indicated. Without expressing a definite opinion at this time, I would incline to the view that a mere preliminary survey, which might or might not be later followed by construction, is not an appropriation of the land to the public use. It would seem that some action indicating upon the ground itself that the tract has been devoted to the public use, is necessary—such as staking the area to be retained by the United States, accompanied by a setting aside of a sufficient part of the appropriation for construction. In other words, the case should be one of either actual construction, or in which the evidence shows that the construction has been provided for, and will be immediately undertaken.

A copy of this communication has been furnished the Commissioner of the General Land Office for his information.

CIRCULAR No. 464

SERVICE OF NOTICE—CLAIMS IN NATIONAL FORESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 21, 1916.

Registers and Receivers, United States Land Offices.

SIRS: It is not intended by paragraph 4 of Circular No. 435 of September 4, 1915—Lands Within National Forests—Practice—Joint Regulations—to require the Forest Service to prepare and serve the notice referred to therein, as required by rule 5 of the Rules of Practice. In such cases you will prepare and serve the notices in the same manner as is now done by you in ordinary Government proceedings.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 613

PRACTICE TO BE FOLLOWED IN CONNECTION WITH PROOFS IN FOREST HOMESTEAD CASES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 12, 1918.

To Registers and Receivers:

The Acting Forester, Department of Agriculture, under date of June 14, 1918, makes the following statement in a letter addressed to the Commissioner of the General Land Office:

> It is noted that in a good many instances the local land offices failed to forward to your office copy of the letters received from the Forest Service stating that no objection will be made to certain entries going to patent. May I suggest that a circular letter to local land offices calling attention to the desirability of these letters being forwarded to you might result in saving unnecessary correspondence?

Your attention is called to the instructions contained in Circular No. 435 of September 4, 1915, Lands Within National Forests—Practice—Joint Regulations. Paragraphs 1, 2, and 3 of said circular contain instructions regarding the sending of notices of intention to make final proof in forest homestead cases to the forest supervisor, and the procedure to be followed by that officer in such cases.

Examination of final proofs in forest homestead claims, upon reaching this office, discloses the fact that in many instances no report from the forest supervisor accompanies the final proof papers. In some instances it has developed that no notice of intention was sent to the forest supervisor by the local land office; in other cases, as stated by the Acting Forester, the local officers failed to inclose the forest supervisor's report when sending in the final proof papers.

The omission by the local land officers of compliance with the above requirements of Circular No. 435 has resulted in considerable unnecessary correspondence between this office and the local offices and with the Forest Service, and has caused vexatious and costly delays to entrymen.

You are requested, in the interest of good administration, to give your especial attention to the matter contained herein, in order that delays may hereafter be avoided because of failure to obtain the requisite report from the forest supervisors in cases of final proofs on forest homestead entries.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

either for construction or maintenance. One of the first and most desirable things, either for construction [illegible] ... [illegible] by means of survey, I see no reason why the expense of such survey should not be [illegible] such expenditure [illegible] the land [illegible] purposes as being "necessary for the [illegible] of proper and economical administration [illegible] of the national forests." [illegible]

I shall [illegible] if you will advise me whether in the case of such expenditure and [illegible] of the land, your department has [illegible] final certificate and patent, provided at the time of [illegible] [illegible] part of the land has been so devoted to public purposes, accompanied by the [illegible] [illegible]

I am of the opinion that [illegible]

[illegible] 1916; and that similar exceptions as to [illegible] [illegible] final certificate [illegible]

[illegible] followed by construction, is not an appropriation of the land [illegible]

[illegible] that some action indicative [illegible]

[illegible]

Department of the Interior,
General Land Office,
Washington, D. C., March 21, 1916.

Registers and Receivers, United States Land Offices.

Sirs: It is not intended by paragraph 4 of Circular No. 435 of September 4, 1915—Lands Within National Forests—Practice—Joint Regulations—to require the Forest Service to prepare and serve the notice referred to therein, as required by rule 5 of the Rules of Practice. In such cases you will prepare and serve the notices in the same manner as is now done by you in ordinary Government proceedings.

Very respectfully,

Clay Tallman, *Commissioner.*

NATIONAL MONUMENTS AND NATIONAL PARKS

[Reported, 39 L. D. 447]

MINERAL OR AGRICULTURAL CLAIMS WITHIN NATIONAL PARKS

Department of the Interior,
General Land Office,
Washington, D. C., January 10, 1911.

Registers and Receivers, United States Land Offices, Chiefs of Field Divisions, and Superintendents of National Parks:

Under date of November 12, 1910, the Secretary of the Interior advised this office, among other things, as follows:

> It is desirable that in so far as it is possible the title to lands within the limits of national parks should remain in the Government, so that the parks may be protected, developed, and controlled by the United States. In a number of parks, however, there are claims, mineral or agricultural, upon which possession is being maintained on the ground that the claims were initiated prior to the creation of the parks or the inhibition of further disposition or acquisition of lands therein.

Accordingly, in all cases of applications to make final proof, final entry, or to purchase public lands, under any public-land law, the register and receiver will, where any of said lands are within the limits of national parks, at once forward a copy thereof to the Chief of Field Division of Special Agents. Such copy, as well as the original application, will be indorsed with the name of the national park within which the said land, or any portion thereof, is situate. A second copy will also be forwarded to the superintendent in charge of the national park.

Valid entries may proceed up to and including the submission of final proof, but no purchase money will be received or final certificate of entry issued until further orders. The record of the entry should be forwarded with your regular monthly returns, and will be held in this office until receipt of the report of the special agent and the superintendent of the park.

The Chief of Field Division, on receipt of such copy of notice, will make a case thereof on his docket, and will also make a field examination of the lands so sought to be entered, and submit a report thereof direct to this office.

Chiefs of field divisions and superintendents will exert every effort to make the field examination prior to date for final proof.

Where the claim sought to be entered is upon unsurveyed land the registers and receivers will carefully examine the plat and field notes of survey of such claim, and such other data as may be available, to ascertain the true locus thereof with respect to national parks; and, if in any doubt as to whether or not the land sought to be purchased is within a national park, they should call upon the Surveyor General for a report in the premises.

The attention of local officers, chiefs of field divisions, and superintendents of national parks, is called especially to the last sentence of the Secretary's order, which reads as follows:

> You will also, upon receipt of report or allegation from special agents or from others, that any locations or claims within national parks, for which application for patent or entry have not been made, are invalid or are not being maintained as required by law, report such cases to this department in order that appropriate instructions may be issued and action taken.

As will be observed, this relates to locations or claims, mineral or agricultural, within national parks, for which no applications for patent or entry have been presented to the local officers. Under these instructions you need not await the presentation of an application for patent for these locations or claims prior to making any investigation or report to this office; but you will promptly, in all such cases as are by you, for any reason, deemed to be invalid, (or reported to you as being invalid), submit your report and recommendations with respect thereto, in order that this office may at the earliest possible moment take such steps, through the department, as may be appropriate and necessary to protect the interests of the Government in the premises.

Fred Dennett, *Commissioner.*

Approved January 10, 1911.

R. A. Ballinger, *Secretary.*

Circular No. 618

LANDS WITHIN NATIONAL PARKS, OR NATIONAL MONUMENTS—NOTICE TO SUPERINTENDENT

Department of the Interior,
General Land Office,
Washington, August 14, 1918.

Registers and Receivers, United States Land Offices.

Sirs: Hereafter when any application to make entry or proof is filed in your office for lands within any national park or within any reservation of lands for national monument, you will immediately notify the superintendent or custodian thereof by ordinary mail and if a protest is received from the superintendent or custodian you will transmit same to the chief of field division to await an investigation in the field and further instruction from this office.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

S. G. Hopkins,
Assistant Secretary.

NEVADA LANDS

[Reported, 52 L. D. 67]

Circular No. 666

IRRIGATION OF ARID LANDS IN NEVADA

[Act of October 22, 1919 (41 Stat. 293), and Amendatory Act of September 22, 1922 (42 Stat. 1012)]

Department of the Interior,
General Land Office,
Washington, April 1, 1927.

Registers, United States Land Offices, Nevada.

Sirs: The following instructions are issued under the provisions of the act of Congress approved October 22, 1919 (41 Stat. 293), entitled "An act to encourage the reclamation of certain arid lands in the State of Nevada, and for other purposes," as amended by the act of September 22, 1922 (42 Stat. 1012).

BENEFICIARIES UNDER THE ACT

1. The act, as the title indicates, is limited in its operation to lands in the State of Nevada and is designed to encourage the development and utilization of subterranean waters for irrigation purposes. It confers upon the Secretary of the Interior authority to grant permits to citizens of the United States, or associations of such citizens, giving the exclusive right to explore not to exceed 2,560 acres of land selected by them.

The only qualifications provided in the act for persons receiving the benefits thereof are that the applicant, or each member of an association of applicants, shall be a citizen of the United States; that he shall not be a beneficiary under any other application or permit under this act for land situated within an area of 40 miles square, and that he has not been a permittee under any other permit under this act, which has been canceled for failure to comply with its terms.

Married women, if their interest is actual and bona fide, have the same privileges as unmarried persons. A corporation is not considered as an association of persons within the meaning and purpose of the act.

A permit under the act is not assignable, but the interest of a deceased permittee will pass to his legal representative.

The 40-mile square limitation is construed to mean an area of that extent in which the lands covered by a permit theretofore granted are in the approximate center; to avoid possible violation of this provision of the act, applicants for more than one permit are advised not to include in their applications for additional permits any lands within less than 20 miles of any boundary of the lands included in any other application or permit in which the applicant is interested.

2. Lands to be designated and made subject to disposition under this act are those public lands which are unreserved, unappropriated, nonmineral, nontimbered, and not known to be susceptible of successful irrigation from any known source of water supply at a reasonable cost. Lists will be furnished the registers of the different local land offices from time to time and they will be advised of the dates when the designations become effective.

APPLICATION

3. Any qualified applicant desiring to explore for water under the terms of this act should file with the register of the land office of the district in which the land is situated, an application for permit, together with a corroborated affidavit as to the character of the land, and pay the filing fee of 1 cent an acre for each acre of land involved.

No blank forms will be furnished, but the application and affidavit may be combined substantially as in Form A, printed at the end of these regulations. Same should be filed in duplicate and cover the following points:

(*a*) Name and post-office address of the applicant or each member of an association of applicants.

(*b*) *Citizenship.*—If the applicant or each member of the association of applicants is a native-born citizen of the United States, the application and affidavit must so state. If a naturalized citizen, the application should state the fact, and be accompanied by a certified copy (special form for land cases) of certificate of naturalization. It should be noted that, unlike most public land laws, no rights may be initiated under this act by an alien who has only filed a declaration of intention to become a citizen.

(*c*) *Special requirements.*—In accordance with the specific requirements found in sections 1, 2, and 3 of the act, the application should include an averment that neither the applicant nor any member of an association of applicants has filed an application under this act for lands within an area of 40 miles square embracing the lands in the present application; that no permit heretofore granted to him, or to any association of which he was a member, has ever been canceled for noncompliance with the terms and conditions of such permit; that the application is honestly and in good faith made for the purpose of reclamation and cultivation, and not for the benefit of any other person or corporation, and that he is not acting as agent for any person, corporation, or syndicate, to give them the benefit of the land applied for, or any part thereof, and that he will faithfully and honestly endeavor to comply with all the requirements of the act.

The application should also include an averment that no spring or water hole exists, if it be a fact, upon any legal subdivision of the land involved, if surveyed, and if unsurveyed, within one-quarter of a mile from the exterior limits thereof. If there be any spring or water hole, the exact location and size should be stated, and an estimate furnished of the quantity of water in gallons which it is capable of producing daily, together with any other information necessary to determine whether or not it is valuable or essential as a public water reserve.

(*d*) *Description of land applied for.*—If the land is surveyed, it should be described by legal subdivisions. If the land is unsurveyed, it should be described with reference to locality, natural objects, and permanent monuments as fully and carefully as possible, with such detail and precision that the boundaries and location of the land may be readily traced and ascertained; if the land is situated within a reasonable distance from a known corner of the public-land survey, the course and distance should be given from such Government corner to a described point on the boundary of the land applied for; also, where practicable, the land should be described, as nearly as can be ascertained, in accordance with the legal subdivisions of the regular extension of the Government survey over the land. In this connection, all applicants for unsurveyed lands are urged to make a complete metes and bounds survey of the land applied for, with an accurate tie-line by course and distance to a Government corner, otherwise, with the large areas that may be embraced in applications under this act, it will be impossible to prevent conflicts and consequent controversy and litigation. If impracticable to make such a survey prior to filing the application, it may be made later, and the descriptions in the application and permit, if granted, may be amended accordingly. All corners of unsurveyed land selected should be marked with substantial post or rock monuments.

All land applied for must be contiguous and situated in reasonably compact form; in the absence of special or unusual conditions, an application for land extending more than 4 miles in any one direction will not be considered acceptable.

A map should accompany each application, showing by legal subdivisions the land selected, if surveyed; if the land is unsurveyed, then it should be shown by legal subdivisions as nearly as possible in accordance with the regular extension of the Government survey.

(*e*) *Character of the land.*—This showing should not only allege that the land applied for is "unreserved, unappropriated, nonmineral, nontimbered public land of the United States in the State of Nevada, not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply," but should also include such a complete statement of pertinent specific facts as will afford an adequate basis for classification and designation, such as (1) the lay of the land, slope; (2) whether timber, sagebrush, or grassland; (3) kind of soil; (4) altitude; (5) length of growing season; (6) rainfall and distribution thereof through the year; (7) location with respect to any surface-water supply for irrigation; (8) what is known as to underground water supply on the land or in the vicinity; (9) whether land will mature crops by dry-farming methods; together with any additional facts having a direct or indirect bearing on the question of whether the land may properly be designated, the chances of successful development, and the good faith of the applicant.

(*f*) *Corroboration.*—If, at the time of filing application, the land has not been designated as subject to the act, all that portion of the combined application and affidavit (Form A) relative to the character of the land must be corroborated by two disinterested witnesses, having personal knowledge of the facts, substantially in the manner shown in Form B; or by a separate and independent affidavit containing an affirmative statement of the facts; but, if the land is already designated at time of filing application, no corroborating witnesses are required.

(*g*) *Verification.*—The application and corroborating affidavits, if required, may be subscribed and sworn to before any officer authorized to administer oaths and having an official seal.

ACTION ON APPLICATION

4. Upon receipt of the papers, the register will carefully examine the same and if found regular transmit them to the General Land Office for appropriate action. In case the land has not been designated, the application will be suspended by the General Land Office until such time as it shall have been designated, or until it shall have been determined that it is not of the character contemplated by the act. If the land shall subsequently be designated under the act, the application will then be approved and a permit issued, if no good and sufficient reason for disapproval be then apparent; otherwise it will be rejected, subject to the right of appeal. During the term of suspension the land will not be subject to disposal in any way.

CONDITIONS OF PERMITS

5. Permits will be granted only upon condition that active operations be begun for the development of underground water within six months from date of approval and continued diligently in good faith until water has been developed in quantity sufficient for the practicable irrigation of not less than 20 acres, or until the date of expiration of the permit; and if the permittee shall not continue such operations in good faith and with reasonable diligence, or if he shall violate any of the terms of the permit, upon presentation of satisfactory proof thereof, the permit will be forthwith canceled and he will not again be granted a permit under the act. (See, however, par. 9.)

PROGRESS REPORTS

6. At or near the end of the six months' period, beginning with the date of the permit, and again at the end of the first year of the life of the permit, if final proof of water development and reclamation has not been submitted, the permittee, or at least one member of an association of permittees, must file in the proper local land office a properly executed affidavit, corroborated by at least two disinterested witnesses, having knowledge of the facts, showing when the work of exploration was begun, in what manner and to what extent it has been prosecuted, and what results have been obtained. This affidavit may be made before any officer authorized to administer an oath. (See, however, par. 9.)

7. (*a*) Unless granted an extension of time the permittee is allowed two years from the date of his permit in which to complete the work of exploration, and whenever he shall within that time satisfactorily establish that sufficient water has been discovered, developed, and made permanently available to produce a profitable agricultural crop other than native grasses, upon not less than 20 acres of the land described in the permit, he will be entitled to patent for one-fourth of the land embraced in the permit. No mere perfunctory or questionable compliance with the law will be accepted. It must appear that an agricultural crop has been actually raised—not necessarily a paying or profitable crop, but such a crop as will satisfy the Secretary of the Interior that in time and under ordinary circumstances profitable crops of some sort can be produced from the land. No patent will be granted until the full 20 acres have been cleared, leveled, ditched, plowed, fenced, and an agricultural crop actually planted and raised by irrigation, all in accordance with good farming practice. The wells, pumps, or other works and equipment for the development and supplying of water must be of a permanent and dependable character, suitable for use year after year. A detailed statement of costs of irrigation and production of crops from such water supply will be required; to this end, accurate account should be kept of such costs. No patent can be granted under the act if the cost of irrigation from the developed water supply is practically prohibitive. The act requires a successful development and demonstration of the use of subterranean water, as the principal condition precedent for patent.

(*b*) The land selected for patent shall be in compact form according to legal subdivisions of the public-land surveys, if the land be surveyed. If the land be unsurveyed, the permittee may, at any time during the life of his permit, apply to the United States surveyor general for the State of Nevada for a survey of the land for which he intends to make application for patent. The surveyor general will thereupon make an estimate of the cost and call on the permittee for a deposit of the amount of the estimate. If the deposit made should prove insufficient, an additional deposit will be called for. If the applicant has not taken steps to procure a survey before submitting final proof, after final proof has been submitted and examined, if same is found satisfactory and acceptable, and in the meantime the public-land system of surveys has not been extended over the lands in question, call will be made on the permittee to make the necessary deposit with the United States surveyor general for Nevada to cover the cost of survey, in which case the issuance of patent will be suspended until the survey is made and accepted. Wherever practicable such official survey will be an extension of the regular system of township surveys, in which case the selection for patent must be conformed to the legal subdivisions of such survey.

(*c*) The act provides that all entries made and patents issued under its provisions shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands entered and patented, together with the right to prospect for, mine, and remove the same.

(*d*) On the issuance of patent the remaining area within the limits of the land embraced in the permit will thereafter be subject to entry and disposal only under the act of May 20, 1862 (sec. 2289, U. S. Rev. Stat.), entitled "An act to secure homesteads to actual settlers on the public domain," and amendments thereto, in areas not exceeding 160 acres.

FINAL PROOF

8. (*a*) Final proof of the discovery, development, and availability of sufficient water to justify patent may be made by the permittee, or, in case of his death, by his heirs, executors, or administrators, or in case the permittee is an association of individuals, by any member of such association, at any time such discovery and development as hereinbefore defined, but must be made within two years after the date of the permit; but an additional period, not to exceed one year, may, upon proper showing, be allowed within which to make the required proof of actual irrigation and cultivation.

(*b*) When a permittee has reclaimed the land and is ready to make final proof he should apply to the register for a notice of intention to make such proof. This notice must contain a complete description of the land selected by him for patent and give the serial number of the permit and name of the claimant. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in the notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(*c*) This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the land, and it must also be posted in a conspicuous place in the local land office for the same period of time. The permittee must pay the cost of the publication, but it is the duty of registers to procure the publication of proper final-proof notice, and registers should accordingly exercise the utmost care in that behalf. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the affidavit of the publisher of the newspaper or by some one authorized to act for him. The register will certify to the posting of the notice in the local office.

(*d*) On the day set in the notice (or in the case of accident or unavoidable delay, within 10 days thereafter) and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

(*e*) Final proof may be made before the register of the land district in which the land is located, or before a United States commissioner, or a judge or clerk of a court of record in the county or land district in which the land is situated. The only condition permitting the taking of such evidence outside the proper land district is where the county in which the land is situated lies partly in two or more land districts, in which case such evidence may be taken anywhere in the county. In case the proof be taken outside the county wherein the land lies, then, unless it was taken before the proper register, the applicant or entryman must show by his affidavit that the qualified officer employed was the one whose place of business, in the land district, is nearest to or most accessible from the land in question. Forms of final proofs will be furnished in due time.

EXTENSIONS OF TIME

9. The act of September 22, 1922 (42 Stat. 1012), authorizes the allowance under certain conditions of an extension of time for a period not exceeding two years for the beginning, recommencement, or completion of the work of water development and the submission of final proof of reclamation. This does not mean that the extension will be granted as a matter of course, and applications for extension will not be granted unless it be clearly shown that the failure to complete the work of exploration and water development or of reclamation, as the case may be, within the required period was due to no fault on the part of the permittee but to some unavoidable delay for which he was not responsible and could not have readily foreseen.

A permittee who desires to make application for extension of time should file with the register an affidavit setting forth fully the facts, showing how and why he has been prevented from beginning or completing the work of water development and making final proof within the regular period. This affidavit may be subscribed and sworn to before any officer authorized to administer oaths and having an official seal, and must be corroborated by at least two witnesses who have personal knowledge of the facts. The register, after carefully considering all the facts, will forward the application to the General Land Office with appropriate recommendation.

The register is required to suspend any application for extension of time if he considers the affidavits defective in form or substance and to allow the applicant 30 days to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, advising him that upon his failure to take any action within the time specified appropriate recommendation will be made. After the expiration of the time thus granted the original application and the amended affidavits or exceptions, as the case may be, together with the proper report and recommendations, will be transmitted to the General Land Office for consideration.

CONTESTS AND PROTESTS

10. Contests and protests may be made against applications, permits, and final proofs under this act, the same as other entries or selections under the public land laws, and same will be disposed of in accordance with the Rules of Practice so far as applicable. No preference right, however, can be gained by such contest or protest, but if successful the entire area embraced in the permit will revert to the public domain and the land will be subject to the applicable public land laws.

Very respectfully,

William Spry, *Commissioner.*

Approved April 8, 1927.

E. C. Finney,
First Assistant Secretary.

(Forms and act omitted.)

OFFICERS AND EMPLOYEES

[Reported, 11 L. D. 348]

OFFICERS AND EMPLOYEES OF GENERAL LAND OFFICE NOT TO PURCHASE PUBLIC LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 15, 1890.[1]

To the Officers and Employees of the Land Department.

GENTLEMEN: Section 452 of the Revised Statutes provides that—

> The officers, clerks, and employees in the General Land Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land, and any person who violates this section shall forthwith be removed from his office.

The honorable Secretary of the Interior, in the case of Herbert McMicken et al. (10 L. D. 97; 11 L. D. 96), has decided that the disqualification to enter public lands, contained in said section, extends to officers, clerks, and employees in any of the branches of the public service under the control and supervision of the Commissioner of the General Land Office in the discharge of his duties relating to the survey and sale of the public lands.

In accordance with said decision, all officers, clerks, and employees in the offices of the surveyors general, the local land offices, and the General Land Office, or any persons, wherever located, employed under the supervision of the Commissioner of the General Land Office, are, during such employment, prohibited from entering, or becoming interested, directly or indirectly, in any of the public lands of the United States.

Very respectfully,

LEWIS A. GROFF, *Commissioner.*

Approved.

GEO. CHANDLER, *Acting Secretary.*

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[1] See circulars of May 12, 1906, p. 1026, and June 21, 1922 (No. 836), p. 1031.

[Reported, 34 L. D. 605]

RIGHT OF WIFE OF EMPLOYEE OF GENERAL LAND OFFICE TO PURCHASE PUBLIC LAND[2]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 12, 1906.

To all Officers, Clerks, and Employees of the United States Who Are in Any Way Connected with Enforcement of the Public Land Laws:

1. Your attention is called to section 452, United States Revised Statutes, which reads as follows:

> The officers, clerks, and employees in the General Land Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his office. (See 11 L. D. 348.)

In construing this statute the department has held (10 L. D. 97), that its provisions—

> extend to officers, clerks, and employees in any of the branches of the public service under the control and supervision of the Commissioner of the General Land Office in the discharge of his duties relating to the survey and sale of the public lands.

2. Acting under the spirit of this law and the decisions referred to, this office will recommend the removal or dismissal of any of the above-named officers, clerks, or employees who shall, either for themselves or others, in any manner negotiate for, buy, sell, or locate, any warrant, scrip, lieu land selection, soldiers' additional right, or any other negotiable right or claim under which an interest in public lands may be asserted, as well as such officers, clerks, or employees who shall, except in the discharge of an official duty, help or in any manner whatever aid or assist in any such negotiations, purchases, sales, or locations as may be made by others for speculative purposes, or who shall in any manner whatever, except in the discharge of an official duty, furnish any information whatever to, or in any manner be in communication with, any person, firm, or corporation dealing in any such rights, in relation to such rights.

3. While section 452 of the Revised Statutes does not prohibit the acquisition of title to the public lands of the United States under appropriate laws by the wives of officers, clerks, and employees of the land department it is not deemed advisable or proper in the interest of good administration that they should do so.. Accordingly, such officers, clerks, and employees are advised that the application, entry, purchase, or acquisition of title, directly or indirectly, to any of the public lands by their wives, prior to the separation from the service of such officers, clerks, or employees, will be deemed a sufficient cause upon which to base a recommendation for removal or dismissal from the service of the officer, clerk, or employee whose wife acquires or seeks to acquire title to any of the public lands.

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[2] See circulars of Sept. 15, 1890, p. 1025, and June 21, 1922 (No. 836), p. 1031.

4. All of such officers who shall be in charge of and maintain offices are hereby directed to bring this circular to the attention of their subordinates, and to hereafter keep the same conspicuously posted in their respective offices.

W. A. Richards, *Commissioner.*

Approved.

E. A. Hitchcock, *Secretary.*

Circular No. 51

COMPLETION OF JURATS AND CERTIFICATES ON APPLICATIONS, AFFIDAVITS, AND DEPOSITIONS

Department of the Interior,
General Land Office,
Washington, D. C., September 6, 1911.

Registers and Receivers, United States Land Offices.

Gentlemen: The attention of this office has been recently directed to a loose and careless practice obtaining in some district land offices, as well as in the procedure of many officers authorized to administer oaths in connection with entries of public lands, whereby the jurat or certificate, showing due administration of the requisite oath, is not completed immediately following oath or immediately following completion of testimony by a witness giving his deposition, but is postponed to a more convenient time. It has also been seen that many of these certificates are not completed in such form as to render certain the manner in which the applicant or witness was identified, whether by personal knowledge of the officer by whom the oath was administered, or by the assurance of some other person to said officer well known, or at all. This ambiguity or uncertainty results from the failure of the officer to strike out of the printed form of certificate such portion of the matter therein contained as does not disclose the means of identification actually employed, thus allowing two forms of statement, one of which is the alternative of the other, to remain and appear in said certificate.

While the forms provided for use in the preparation of these certificates sufficiently indicate to an intelligent officer what matter shall remain and what should be eliminated, and while the instructions heretofore promulgated (circular of Mar. 24, 1905,[a] 33 L. D. 480) are clear and specific in terms and positive in their direction, official neglect of and inattention to those important duties continues to be displayed.

The object of this communication is to insist upon a vigilant and intelligent adherence to and enforcement of the regulations in this behalf made. In the future you will strictly observe the injunction now laid upon you to fully complete each and every application, affidavit, or deposition executed or submitted in your office, by preparing and signing the requisite jurat or certificate immediately following the administration of an oath to an applicant or affiant, or immediately on complete submission of his testimony by a witness giving in his deposition in final proof or other proceeding. The form of certificate should be carefully examined and one of the alternative forms of statement eliminated, so that the certificate, when completed, will distinctly disclose the means by which the identify of the applicant or witness was effected.

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[a] Circular of Mar. 24, 1905, has been superseded by Circular of Aug. 23, 1915 (No. 433), p. 1028.

On receipt of any application, affidavit, or deposition in which the appended jurat or certificate does not conform to the regulations herein referred to, you will suspend action thereon, notifying the applicant or entryman of the defect, and, on his request and at his expense, you will return the defective paper to the officer by whom the jurat or certificate was signed, with leave to him to amend the same, upon its face, in such manner as to cure the defect, and in accordance with the facts as they existed at the time the oath was administered. If amendment is refused or can not be effected, the paper will be rejected as insufficient, with due notice of such rejection to the interested parties.

No officer will be permitted to exact any fee or compensation for correction of a defect for which he is responsible, and neglect or refusal on the part of any such officer to remedy his error or to return with reasonable promptness any paper transmitted to him for amendment, as aforesaid, will be cause for an order denying to him the privilege of receiving testimony in final proof and other proceedings. You will report to this office the name, official character, and address of any officer of whose violation of these instructions you may receive information.

A sufficient number of copies of this circular letter will be supplied to you, from which you will furnish one copy to each and every officer in your district who is empowered by law to administer oaths in connection with public-land entries, and you will, in transmitting the same, urge them to be attentive to the warning hereby conveyed.

Very respectfully,

S. V. PROUDFIT,
Acting Commissioner.

[Reported, 44 L. D. 350]

CIRCULAR NO. 433

SUGGESTIONS TO UNITED STATES COMMISSIONERS AND JUDGES AND CLERKS OF COURTS OF RECORD, UNDER SECTION 2294, UNITED STATES REVISED STATUTES, AS AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 23, 1915.[3]

The following is a revision of the circular of March 24, 1905 (33 L. D. 480), the paragraphs amended being those numbered 2, 8, 9, and 10. A new paragraph 13 is inserted, and former paragraph 13 is now numbered 14.

1. No oath in support of any application, entry, proof, or claim to public lands should be administered to any stranger until he has

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[3] See circular of May 9, 1906, p. 537.

first been reliably made known and identified to the officer administering it as the identical person he represents himself to be.

2. No jurat or certificate should be attached to any oath, affidavit, application, proof, or other written statement affecting public lands until such oath, affidavit, application, proof, or statement has been fully written out and completed, and until all blank spaces in any blank form prescribed or used therefor shall have been fully filled out or erased, and not then until after the same has been sworn to and signed by the affiant before and in the presence of the attesting officer and fully read by or made known to the affiiant. No certification of papers will be recognized by the Land Department in the absence of a seal duly impressed by the officer.

3. Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a. m. and 6 p. m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof can not be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

4. Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the register and receiver for their consideration and action.

5. All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no special agent or other representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the register and receiver with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the register and receiver of any facts not set out in the testimony which in his judgment, cast suspicion upon the good faith of the applicant or the validity of the entry.

6. The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

7. Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

8. The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the register and receiver. In no case should the transmittal thereof be left to the claimant.

9. No fee in excess of 25 cents can be lawfully charged or received for administering the oath to any affidavit, application, proof, or any other written statement affecting public lands; but there is no restriction on the fee the officer may charge for preparation of any paper, except that the total amount to be received for taking and writing out the final proof testimony of a claimant or of a witness, and administering the oath thereto, shall not exceed the sum of $1. Any officer demanding or receiving greater sums than are here specified for such services will be subject to indictment and punishment under amended section 2294 of the United States Revised Statutes.

10. No officer who takes an application, affidavit, or final proof in a case will be permitted to act as attorney therein. No United States commissioner will, while holding that office, be recognized or permitted to appear as an agent or attorney for others in any matter pending before the Land Department affecting the title to public lands, nor will he be permitted to enroll himself as agent or attorney to practice before it.

11. No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

12. No officer authorized to take final proofs should, either for himself or as agent, attorney, or representative of another, induce or attempt to induce any owner, entryman, or other person to purchase, sell, mortgage, exchange, lease, or relinquish any lands which are involved, may be involved, or have been involved in any affidavit, application, or proof, executed before him, and he should not, either for himself or as agent for any other person, in any manner solicit or make to any entryman, owner, or claimant any loan or attempted loan the payment of which is to be secured by a lien or mortgage upon such lands; and he should not be or remain a member or stockholder of any copartnership or company which shall, either directly or indirectly, be interested in or benefited by any such sale, mortgage, exchange, lease, relinquishment, or loan, nor accept nor receive in any

manner any fee, commission, compensation, emolument, or benefit arising therefrom, except for the lawful discharge of his official duties.

13. An application for public land is not allowable if executed more than 10 days before its filing at the local United States land office.

14. Any officer violating any of these rules may be deprived of the right of further taking final proofs, and when any commissioner has so offended his action may be called to the attention of the court by which he was appointed, with appropriate recommendations. All registers and receivers and special agents have been charged to use their utmost diligence in seeing that these rules are fully and in good faith complied with, and directed to investigate and fully report any apparent violations thereof which may come to their notice.

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones,
First Assistant Secretary.

(Law omitted.)

[Reported, 49 L. D. 152]

Circular No. 836

OFFICERS AND EMPLOYEES AND THEIR WIVES NOT TO BE INTERESTED IN DISPOSITION OF THE PUBLIC LANDS—REGULATIONS AMENDED SO AS TO INCLUDE LEASES, PERMITS, OR ANY FORM OF APPLICATION

Department of the Interior,
General Land Office,
Washington, June 21, 1922.

To all Officers, Clerks, and Employees of the General Land Office at Washington or Elsewhere:

1. Your attention is called to section 452, Revised Statutes, which reads as follows:

> The officers, clerks, and employees in the General Land Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from his office.

2. Departmental circular of September 15, 1890 (11 L. D. 348), stated that said section applied to all officers, clerks, and employees in the offices of the surveyors general, the local land offices, and the General Land Office, or any person wherever located or employed, under the supervision of the General Land Office.

3. Departmental circular of May 12, 1906 (34 L. D. 605), extended the regulations of February 15, 1890, so as to include the wives of officers and employees.

4. The Supreme Court of the United States, in the case of Waskey *v.* Hammer (223 U. S. 83), referred with approval to the departmental instructions and held that—

> The term "purchase" is inclusive of the various modes of securing title to or rights in public lands under the general laws regulating their disposal.

5. Said circulars of September 15, 1890, and May 12, 1906, are hereby amended so as to apply to the act of February 25, 1920 (41 Stat. 437), and all other acts whereby and whereunder any claim or interest whatsoever in and to the public lands is sought by sale, entry, selection, location, lease, permit, license, or any other form of application.

William Spry, *Commissioner.*

Approved June 21, 1922.

E. C. Finney,
Acting Secretary.

[Reported, 49 L. D. 586]

Circular No. 894

SECTION 2294, REVISED STATUTES, AS AMENDED BY ACT OF FEBRUARY 23, 1923 (42 STAT. 1281)—SUPPLEMENTAL INSTRUCTIONS

Department of the Interior,
General Land Office,
Washington, May 8, 1923.

Registers and Receivers, United States Land Offices.

Gentlemen: By office letter of May 7, 1923 (1089363), to the register and receiver at Phoenix, Ariz., approved by the First Assistant Secretary of the Interior, it was held that the proofs, affidavits, and oaths mentioned in section 2294, Revised Statutes, as amended by the act of February 23, 1923 (42 Stat. 1281), may be executed before a qualified officer within the boundaries of either the county or land district in which the land is located, without any showing as to the nearness or accessibility of such officer, or outside both the county and land district upon a showing by affidavit, satisfactory to the Commissioner of the General Land Office, that the officer so acting was, because of topographic or geographic conditions, nearer or more accessible to the land. Reference is had to Circular No. 884, dated March 23, 1923.

You will be governed accordingly.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 963

LIST OF OFFICIALS TO BE ADDRESSED RELATIVE TO STATE AND OTHER LANDS OUTSIDE THE JURISDICTION OF GENERAL LAND OFFICE

[Issued October 22, 1924; revised November, 1929]

Department of the Interior,
General Land Office,
Washington.

From time to time inquiries are received in the General Land Office, and perhaps at the district land offices, concerning State lands. It is our desire to be of service to those who write for information; if we can not give the information, we should endeavor to refer the writer to the proper office.

The following is a list of officials to be addressed relative to State and other lands outside the jurisdiction of this office. Correspondents desiring information relative to such lands should be referred to these officials.

Alabama, secretary of state, Montgomery.

Arizona, State land commissioner, Phoenix.

Arkansas, commissioner of State lands, Little Rock.

California, chief of division and register of State lands, Sacramento.

Colorado, State board of land commissioners, Denver.

Connecticut, the State treasurer, Hartford.

Delaware, chairman, public lands commission, Dover.

Florida, commissioner of agriculture, Tallahassee.

Georgia, secretary of state, Atlanta.

Illinois, auditor of public accounts, Springfield.

Indiana, auditor for State, Indianapolis.

Idaho, State land commissioner, Boise.

Iowa, secretary of state, Des Moines.

Kansas, auditor of State and register of State lands, Topeka.

Kentucky, auditor for State, Frankfort.

Louisiana, register of State lands, Baton Rouge.

Maine, State land agent and forest commissioner, statehouse, Augusta.

Maryland, land commissioner, Annapolis.

Massachusetts, department of conservation, statehouse, Boston.

Michigan, director, department of conservation, Lansing.

Minnesota, auditor for State, St. Paul.

Missouri, secretary of state, Jefferson City.

Mississippi, land commissioner, Jackson.

Montana, commissioner of State lands and investments, Helena.

Nebraska, commissioner of public lands and buildings, Lincoln.

Nevada, State land register, Carson City.

New Hampshire, State forester, Concord.

New Jersey, board of conservation and development (regarding forest lands), board of conservation and navigation (regarding riparian lands), statehouse, Trenton.

New Mexico, commissioner of public lands, Santa Fe.

New York, commissioner of land office, Albany; regarding forest lands, superintendent of State forest, care of State conservation department, Albany.

North Carolina, secretary of state, Raleigh.

North Dakota, State land commissioner, Bismarck.

Ohio, auditor of State, Columbus.

Oklahoma, secretary, State land commission, Oklahoma City.

Oregon, clerk of State land board, Salem.

Pennsylvania, secretary of internal affairs, Harrisburg.

Rhode Island, no State land.

South Carolina, secretary, sinking fund commission, Columbia.

South Dakota, commissioner of schools and public lands, Pierre.

Tennessee, State board of control, Nashville.

Texas, commissioner, general land office, Austin.

Utah, executive secretary, State land board, Salt Lake City.
Virginia, register of land office, Richmond.
Vermont, commissioner of forestry, Montpelier.
Washington, commissioner of public lands, Olympia.
West Virginia, State tax commissioner, or State auditor, Charleston.
Wisconsin, the commissioners of the public lands, Madison.
Wyoming, commissioner of public lands, Cheyenne.

INSULAR POSSESSIONS

Philippines, secretary of interior, Manila, P. I.
Cuba, secretary of interior, Havana, Cuba.
Isle of Pines, secretary of interior, Havana, Cuba.
Hawaii, commissioner of public lands, Honolulu.
Porto Rico, commissioner of interior, San Juan, P. R.
Virgin Islands, governor, St. Thomas, Virgin Islands, United States of America.
Samoan Islands, bureau of insular affairs, War Department.
Guam, governor at Guam, Guam.
Palmyra Island, bureau of insular affairs, War Department.

OTHER COUNTRIES

Dominion of Canada, secretary, department of interior, Ottawa.
Panama, Secretary of Public Work, Panama, Republic of Panama.
Mexico, Secretary of Agriculture, Mexico City, Mexico.

C. C. MOORE, *Commissioner.*

[Reported, 51 L. D. 483]

CIRCULAR No. 1074

ACTING REGISTERS AUTHORIZED TO ADMINISTER OATHS AT ANY TIME IN PUBLIC LAND MATTERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 24, 1926.

To Registers and Acting Registers, United States Land Offices.

SIRS: By act of May 17, 1926 (44 Stat. 558), provision has been made for acting registers of district land offices to administer oaths at any time in public-land matters. The act reads as follows:

> That a qualified employee of the Department of the Interior who has been designated to act as register of any United States land office pursuant to the provisions of the act of October 28, 1921, "An Act for the consolidation of the offices of register and receiver in certain cases and for other purposes" (Forty-second Statutes at Large, page 208), may at all times administer any oath required by law or the instructions of the General Land Office in connection with the entry or purchase of any tract of public land, but he shall not charge or receive, directly or indirectly, any compensation for administering such oath.

The intent and purpose of the act is to avoid delay and inconvenience to public-land claimants by having someone in the land office at all times who is authorized to administer oaths in public-land cases. Under the provisions of the act the acting register may administer oaths at any time, whether the register is present or absent, and no report is required to be made to this office when he performs such service, but nothing contained therein shall be construed to permit the acting register to perform any other duties required to be performed solely by the register when the latter official is on duty, nor to relieve the acting register from the duty of reporting to this office the same as heretofore the exact date and hour of the beginning and termination of his service as acting register at such times as the register may be absent from the office for a day or longer.

The act does not in any way relieve the register of his responsibility for the proper performance of the duties imposed upon him by law, and it is not expected that he will permit private interests to interfere with his active attention to official business, and he is expected to remain on duty at all times except when absent on leave previously granted by this office.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 51 L. D. 572]

Circular No. 884 (Revised)[4]

OFFICERS AUTHORIZED TO ADMINISTER OATHS IN PUBLIC LAND CASES

Department of the Interior,
General Land Office,
Washington, September 3, 1926.

Registers, United States Land Offices.

Sirs: Section 2294, Revised Statutes, as amended by the act of March 11, 1902 (32 Stat. 63); the act of March 4, 1904 (33 Stat. 59); and the act of February 23, 1923 (42 Stat. 1281), provides:

> That hereafter all proofs, affidavits, and oaths of any kind whatsoever required to be made by applicants and entrymen under the homestead, preemption, timber-culture, desert-land, and timber and stone acts, may in addition to those now authorized to take such affidavits, proofs, and oaths be made before any United States commissioner or commissioner of the court exercising Federal jurisdiction in the Territory or before the judge or clerk of any court of record in the county, parish, or land district in which the lands are situated: *Provided,* That in cases where because of geographic or topographic conditions there is a qualified officer nearer or more accessible to the land involved, but outside the county and land district, affidavits, proofs, and oaths may be taken before such officer: *Provided further,* That in case the affidavits, proofs, and oaths hereinbefore mentioned be taken outside of the county or land district in which the land is located, the applicant must show by affidavit, satisfactory to the Commissioner of the General Land Office, that it was taken before the nearest or most accessible officer qualified to take such affidavits, proofs, and oaths; but such showing by affidavit need not be made in making final proof if the proof be taken in the town or city where the newspaper is published

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[4] See Circulars Nos. 894, p. 1032, and 1074, p. 1034.

in which the final proof notice is printed. The proof, affidavit, and oath, when so made and duly subscribed, or which may have heretofore been so made and duly subscribed, shall have the same force and effect as if made before the register and receiver when transmitted to them with the fees and commissions allowed and required by law. That if any witness making such proof, or any applicant making such affidavit or oath, shall knowingly, willfully, or corruptly swear falsely to any material matter contained in said proofs, affidavits, or oaths, he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. That the fees for entries and for final proofs, when made before any other officer than the register and receiver, shall be as follows:

For each affidavit, 25 cents.

For each deposition of claimant or witness when not prepared by the officer, 25 cents.

For each deposition of claimant or witness prepared by the officer, $1.

Any officer demanding or receiving a greater sum for such services shall be guilty of misdemeanor and upon conviction shall be punished for each offense by a fine not exceeding $100.

The act of May 17, 1926 (44 Stat. 558), provides:

That a qualified employee of the Department of the Interior who has been designated to act as register of any United States land office pursuant to the provisions of the act of October 28, 1921, "An act for the consolidation of the offices of register and receiver in certain cases, and for other purposes" (Forty-second Statutes at Large, page 208), may at all times administer any oath required by law or the instructions of the General Land Office in connection with the entry or purchase of any tract of public land, but he shall not charge or receive, directly or indirectly, any compensation for administering such oath.

The act of July 3, 1926 (44 Stat. 830), provides:

That in all cases in which, under the laws of the United States, oaths are authorized or required to be administered, they may be administered by notaries public duly appointed in any State, District, or Territory of the United States, by clerks and prothonotaries of courts of record of any such State, District, or Territory, by the deputies of such clerks and prothonotaries, and by all magistrates authorized by the laws of or pertaining to any such State, District, or Territory to administer oaths.

As a result of the enactment of the said acts of May 17 and July 3, 1926, oaths in public land cases may now be executed before the register or the acting register of the United States land office and, in Alaska, before the receiver (where there is a receiver), or before a United States commissioner, or a notary public, or before a judge or clerk or prothonotary of a court of record, or the deputy of such clerk or prothonotary, or before a magistrate authorized by the laws of the State, District, or Territory of the United States to administer oaths, in the county, parish, or land district in which the land lies, or before any officer of the classes mentioned who resides nearer or more accessible to the land, although he may reside outside of the county and land district in which the land is situated.

Where an oath is administered before an officer outside of the county, parish, or land district in which the land applied for is situated, an affidavit must be furnished satisfactory to the Commissioner of the General Land Office, that because of topographic or geographic conditions the officer was nearer or more accessible to the land; but in those States in which there is no United States land office an affidavit may be executed before any qualified officer in the State without any showing as to his nearness or accessibility with reference to any particular county.

Except as to the register or the acting register, the official character of any officer not using a seal of office must be certified to under seal by the clerk of court having the record of his appointment and qualifications.

Very respectfully,

William Spry, *Commissioner.*

Approved September 3, 1926.

E. C. Finney, *First Assistant Secretary.*

Circular No. 1167

CHANGING DESIGNATION OF FIELD OFFICERS

Department of the Interior,
General Land Office,
Washington, September 28, 1928.

To all Field Officers:

By departmental order of September 25, the following changes in designations were made, effective October 1, 1928:

Old designation:	New designation:
Inspection service.	Field Service, General Land Office.
Chief inspector	Chief of Field Service.
Division inspector	Chief of Field Division.
Inspector (formerly special agent)	Examiner.
Inspector (formerly mineral examiner)	Mining engineer (authorized by department August 30, 1928; will be consummated later through Civil Service Commission).
Carey Act inspector	Irrigation engineer.
Timber cruise	Timber cruiser.
Hearings officers	District law officer.

All communications to the Chief of Field Service and to the Chiefs of Field Divisions will be addressed as follows:

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Chief of Field Service, General Land Office, Washington, D. C.

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Chief of Field Division, General Land Office,

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William Spry, *Commissioner.*

[illegible] before the register and receiver when [illegible] them with the [illegible] commissions allowed and required by law. That if any witness [illegible] proof, or any applicant making such affidavit or [illegible] wil- [illegible] any material matter contained in said proofs, affidavits, or oaths, he shall be deemed guilty of perjury, and shall be liable to the same pains and penalties as if he had sworn falsely before the register. [illegible] proofs, when made before any other officer than the register and receiver, shall be as follows:

For each affidavit, 25 cents.

For each deposition of claimant or witness when not prepared by the officer, 25 cents.

For each deposition of claimant or witness prepared by the officer, $1.

Any officer demanding or receiving a greater sum for such services shall be guilty of a misdemeanor and upon conviction [illegible] for each offense by a fine not exceeding $100.

The act of [illegible] provides:

[illegible] of the Department of the Interior who has been [illegible] designated to act as register of any United States land office [illegible] provision of the act of October 28, 1921, [illegible] (Forty-second Statutes [illegible] of the General Land Office in connection with [illegible] oath required by law [illegible] any tract of public land, [illegible] charge or receive [illegible] any compensation [illegible] such oath.

The act of July 3, [illegible] under the laws of the United States, oaths are [illegible] administered, they may be administered by [illegible] State, District, or Territory of the United States, [illegible] courts of record of any such State, [illegible] by clerks and [illegible] deputies of such clerks and prothonotaries, and [illegible] by all magistrates [illegible] the laws of or pertaining to any such State, District, or Territory [illegible]

[illegible] acts of May 17 and July 3, 1926, oaths in public land [illegible] register or the acting register of the United States land office and, in Alaska, [illegible] before a United States commissioner, or a notary public, or before a judge [illegible] or clerk or prothonotary [illegible] such clerk or prothonotary—or before a magistrate authorized by the laws [illegible] of the United States to administer oaths, in the county, parish, or land district in which the land lies, or before any officer of the classes mentioned who resides nearer or more accessible to the land, although he may reside outside of the county and land district in which the land is situated.

Where an oath is administered before an officer outside of the county, parish, or land district in which the land applied for is situated, an affidavit must be furnished satisfactory to the Commissioner of the General Land Office, that because of topographic or geographic conditions the officer was nearer or more accessible to the land; but in those States in which there is no United States land office an affidavit may be executed before any qualified officer in the State without any showing as to his nearness or accessibility with reference to any particular county.

OKLAHOMA LANDS

CIRCULAR NO. 852[1]

REGULATIONS FOR THE OPENING TO ENTRY OF LANDS IN THE EASTERN SALINE RESERVE, OKLA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 22, 1922.

REGISTER AND RECEIVER, *Guthrie, Okla.*

GENTLEMEN: Executive Order No. 2685 of August 16, 1917, temporarily withdrew under the authority of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497), certain lands in Oklahoma, pending determination as to the advisability of reserving said lands for military purposes.

Executive Order No. 3705, approved July 1, 1922, revoked said order of August 16, 1917, and the lands withdrawn thereunder were returned to the Department of the Interior for disposition as may be provided by law. Under date of July 24, 1922, copies of said Executive Order No. 3705 were sent your office and you were informed that you would be later advised of the disposition to be made of said lands.

The records of this office show that the Eastern Saline Reserve, located in Alfalfa County, Okla., was made pursuant to the act of August 7, 1882 (22 Stat. 349), by presidential proclamation dated August 19, 1893 (28 Stat. 1222). This reservation was restored to the public domain by presidential proclamation of July 27, 1898 (30 Stat. 1779), to be disposed of under the laws relating to the public lands in the Cherokee Outlet, subject to the policy of the Government in disposing of saline lands. The lands in the Cherokee Outlet were subject to disposition under section 10 of the act of March 3, 1893 (27 Stat. 612, 640). Said act provided for the disposition of said lands under section 13 of the act of March 2, 1889 (25 Stat. 1005), said act providing for the disposition thereof to actual settlers under the homestead and townsite laws only.

The act of January 31, 1901 (31 Stat. 745), provides that all unoccupied lands of the United States containing salt springs or deposits of salt in any form, and chiefly valuable therefor, are declared to be subject to location and purchase under the provisions of the law relating to placer mining claims. By instructions of November 14, 1901 (31 L. D. 131), local offices were instructed to require an affidavit showing that the lands applied for contained no salt springs or deposits of salt in any form sufficient to render said land chiefly valuable therefor. The lands in said Eastern Saline

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[1] **Amended by instructions of Feb. 19, 1929, p. 1041.**

Reserve, in so far as they are chiefly valuable for salt springs or deposits of salt, are subject to disposition only under said act of January 31, 1901.

All withdrawals affecting these lands having now been revoked, these lands will now be opened to entry in accordance with departmental regulations of May 17, 1917 (46 L. D. 121), and departmental decision of May 6, 1919 (47 L. D. 141).

(List of lands omitted.)

In the absence of other withdrawals or valid adverse claims, all of the vacant, unappropriated public land therein not chiefly valuable for salt will become subject to entry under the homestead laws only with a preference right to qualified ex-service men of the World War, who have been honorably discharged or separated from the service, under the provisions of the act of February 14, 1920 (41 Stat. 434), as amended.

Preference to ex-service men.—1. From November 13, 1922, to February 10, 1923, both dates inclusive, lands may be entered under the homestead laws only, by ex-service men of the World War who have been honorably discharged or separated from the service or placed in the Regular Army or Navy Reserve, provided that from October 23, 1922, to November 11, 1922, both dates inclusive, applications may be presented by such persons under said laws, such applications to be treated as simultaneously filed and disposed of before action is taken on other preference applications.

General disposition.—2. The lands, if any, not disposed of during said preference period will become subject to appropriation under any applicable land laws, including settlement under the homestead law in advance of entry, by any qualified persons, on March 5, 1923, and not before then, provided that from February 12, 1923, to March 3, 1923, both dates inclusive, any qualified persons may present applications for said land under the homestead laws only, such applications to be treated as simultaneously filed and disposed of before action is taken on other nonpreference applications.

The preference rights above provided for are subject to valid settlement rights or equitable claims recognized by existing laws, and such claims should be asserted during the 20-day period provided in paragraph 1.

In the event conflicts appear between applications treated as simultaneously filed, as herein provided, drawings will be held to determine the order in which the conflicting applications will be acted upon.

Homestead entrymen will be required to comply with the usual requirements, pay the usual fees and commissions required by law and also to make payment for the land embraced in this Eastern Saline Reserve, at the rate of $1.50 per acre. This money may be paid in full at the date of the allowance of the entry or acceptance of final proof, with interest upon the amount so to be paid for said land from date of entry to date of final payment therefor at the rate of 4 per cent per annum. After acceptance of final proof and payment in full for the land, a final certificate may be issued.[2]

You will make proper notations relating to this opening upon your records, post a copy in your office, and give as much publicity as possible, as a matter of news, without expense to the Government, by forwarding copies hereof to the post office nearest the land for posting therein for the information of the public, and by transmitting copies or items concerning same to the newspapers published nearest the land, being careful not to send such copies or items without calling the particular attention of the publishers to the fact that it is sent as a matter of news and that the Government will not be responsible for the cost of any publication thereof.

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[2] See amendment, p. 1041.

Acknowledge receipt hereof and promptly report your compliance with the instructions herein contained.

Very respectfully,

William Spry, *Commissioner.*

Approved September 22, 1922.

E. C. Finney,
First Assistant Secretary.

[From Land Service Bulletin, May, 1928, p. 47]

ISOLATED TRACT LAW EXTENDED TO OKLAHOMA

[Public—No. 313—70th Congress—(45 Stat. 457)]

[S. 2725]

AN ACT To extend the provisions of section 2455, United States Revised Statutes, to certain public lands in the State of Oklahoma

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the provisions of section 2455, United States Revised Statutes (section 1171, Title 43, United States Code), as amended, be, and they are hereby, extended to surveyed, unreserved, unappropriated nonmineral public lands in that part of the State of Oklahoma formerly comprised in Oklahoma Territory: *Provided,* That this Act shall not apply to any such area where under existing law such lands are now subject to public or private sale: *Provided further,* That the proceeds of all sales hereunder shall be deposited in the Treasury of the United States to the credit of such fund or funds as may be provided by existing law for the disposition of such lands.

Approved April 24, 1928.

Applications under this act will be governed by the regulations contained in Circular No. 684, copies of which and forms of application may be obtained of the General Land Office, Washington, D. C.

PAYMENT FOR EASTERN SALINE RESERVE LANDS, OKLAHOMA

Department of the Interior,
General Land Office,
Washington, February 13, 1929.

The Sectetary of the Interior.

Sir: The third paragraph from the end of Circular 852, dated September 22, 1922, being Regulations for the Opening to Entry of

Lands in the Eastern Saline Reserve, Okla., is hereby amended to read as follows:

> Homestead entrymen will be required to comply with the usual requirements and pay the usual fee and commissions. If regular 3-year proof is submitted no price per acre is required to be paid, but if commutation proof is offered the lands in this Eastern Saline reservation must be paid for at the rate of $1.50 per acre in accordance with institutions issued March 21, 1901 (30 L. D. 540).

Very respectfully,

William Spry, *Commissioner.*

Approved February 19, 1929.

E. C. Finney,
First Assistant Secretary.

OPENINGS AND RESTORATIONS

[Reported, 43 L. D. 254]

CIRCULAR NO. 324[1]

DISPOSITION OF APPLICATIONS, FILINGS, AND SELECTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 22, 1914.

Registers and Receivers, United States Land Offices.

SIRS: Hereafter when lands unsurveyed or withdrawn or reserved are to become subject to disposition under the laws applicable thereto by the filing of a township plat of survey or by restoration to entry from such withdrawals or reservations all applications, filings, or selections therefor may be executed in the manner required by law and, with the required fee and commissions, be presented to the proper local land office in person, by mail or otherwise, within the period of 20 days prior to the date of filing the township plat or of restoration to entry, unless the law or the regulations governing the disposition of a particular application or the land affected otherwise provide. No priority will be secured nor right forfeited by the presentation of such application, filing, or selection in the manner and within the time prescribed prior to the filing of the township plat or the restoration of the land to entry, and all such applications, filings, and selections shall, with those presented by persons present at the local office at the hour the lands become subject to entry, be held and treated as simultaneously filed.

Applications presented after the lands become subject to entry will be received and noted in the order of their filing.

Any application, filing, or selection not based on a prior settlement right will be subject to valid settlement claims asserted in the manner required by law.

The register and receiver will carefully compare all applications simultaneously filed as aforesaid and will dispose of them as follows:

1. Where there is no conflict the application shall be allowed, irrespective of whether settlement is alleged.

2. In case of conflicting applications and only one of the applicants alleged prior settlement, his application shall be allowed and the others rejected.

3. If two or more conflicting applications are received, each containing allegations of prior settlement, a hearing shall be ordered to

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[1] See Circular No. 822, p. 779.

determine the priority of right, and it shall be restricted to those alleging such right.

4. Where there are applications conflicting in whole or in part in which no one of the several applicants claims prior settlement the register and receiver will write on cards the names of the several applicants, and each of these cards shall be placed in an envelope upon which there is no distinctive or identifying mark, and at 2 o'clock p. m. on the date of opening to entry, if practicable (if not, at the same hour one week later), after all the envelopes containing the names of the several applicants shall have been thoroughly mixed in the presence of such persons as may desire to be present, they shall be drawn and numbered in order. The cards as numbered and drawn will be securely fastened to the applications of the respective persons, and the applications shall be allowed in such order. Where any applicant fails to obtain all the land applied for by him he will be permitted to elect whether he will retain the land secured and amend his application to embrace other lands not affected by pending applications and otherwise subject thereto when such amended application is presented, or withdraw his original application without prejudice, and in the event of such withdrawal the fee and commissions will be returned by the receiver. Applications conflicting in whole with those previously allowed will be rejected in the usual manner.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

OREGON AND CALIFORNIA RAILROAD GRANT LANDS, ETC.

[Reported, 46 L. D. 424]

Circular No. 611

REGULATIONS GOVERNING EXCHANGE OF OREGON AND CALIFORNIA LANDS

Department of the Interior,
General Land Office,
Washington, July 17, 1918.

The Secretary of the Interior.

Sir: I have the honor to submit herewith, for your approval, the following general regulations for carrying into effect the act of Congress approved May 31, 1918, " To authorize the Secretary of the Interior to exchange for lands in private ownership lands formerly embraced in the grant to the Oregon and California Railroad Company."

Section 1. Proposals for exchange should be addressed to the Commissioner of the General Land Office and filed in the United States Land Office of the district in which the land is situated, setting forth by section, township, and range the lands tendered for exchange, and by similar description the lands desired in return therefor. Such proposal should include an agreement to pay the expense of a field examination, in case the Secretary determines to effect an exchange, if a cruise shall show the same feasible and to the interest of the Government.

Sec. 2. With the proposal for exchange should be furnished a duly authenticated abstract of title to the lands submitted as a basis of exchange, brought down to the date of the proposal, showing at such time the legal and equitable title to be vested in the proponent and the lands free from all liability for taxes, pending suits, judgment liens, or other encumbrances, except such as may be set forth in the proposal and due provision made for the extinguishment thereof.

The proposal should also be accompanied by as full data as is available as to the character of the land and the amount and kind of timber on the land proposed to be exchanged.

Sec. 3. The district officers, on the receipt of a proposal for exchange, shall file the same, giving it a serial number and after due notation on the records of the lands desired in exchange, transmit the same to the General Land Office with a statement as to any existing conflicts, if such be shown on their records.

Applications to enter tendered for any of the lands involved in a proposed exchange will be received, duly noted of record, and suspended until further advised.

Sec. 4. On the receipt of a proposal for exchange in the General Land Office it shall be given a preliminary examination, and if found substantially in the required form and prima facie justifying favorable action it shall be submitted to the Secretary with such recommendation as may be deemed appropriate for his consideration and such instructions as to subsequent action thereon as he may deem advisable in the premises.

Sec. 5. In the event of favorable action by the Secretary on the proposed exchange as submitted to him, the General Land Office will refer the same to the field for a cruise of the tracts involved, if such cruise has not already been made, and call upon the proponent to deposit such sums with the receiver of the proper land office as may be estimated as necessary to pay the expense thereof.

Sec. 6. Before final action is taken upon a proposal; such a cruise shall be had and furnished as shall disclose the kind, character, and value of the timber standing and being upon each 40-acre subdivision of the lands involved in the proposed transaction, and owned by each of the parties thereto, so that it can be determined from such cruise whether the lands offered in exchange are of approximately equal aggregate value of those sought in exchange.

A comprehensive report by the field officer in charge of the cruise shall also be made, setting forth such facts with respect to the topography of the land tendered in exchange, and the extent and direction of the water courses thereon which should be known in order to determine the value of the timber on such lands as a logging proposition.

Sec. 7. If after a cruise of the lands involved and such other investigation as may be deemed expedient, the proposed exchange seems advisable, either in whole or in part, and the proponent agrees to and accepts such conclusion, the commissioner shall direct a publication of the notice of the proposal in a newspaper of general circulation, published in the city of Portland, for a period of 30 days, describing said lands and advising all persons having any claim thereto that the same should be filed in the district land office within said period of publication.

Sec. 8. In the absence of any adverse claims filed in response to the notice of publication, or otherwise, or after the disposition of such claims, the proposal for exchange will be taken up for such final action as may be warranted on the facts presented as to the relative value of the lands involved considered in the aggregate, and the resulting advantage to the United States by the acceptance of the proposal; due consideration being given to any intervening proposals for the right of exchange.

Sec. 9. So far as can now be anticipated, the only adverse claims that can arise, or be entitled to consideration under a proposal for exchange, so far as the revested lands are concerned, are such as may be asserted under the preference right accorded settlers by section 5 of the act of June 9, 1916 (39 Stat. 218), or under the mining laws, either one of which, if well founded, will serve to except the land covered thereby from the exchange; and inasmuch as said act extends the mining laws generally to the revested lands (power sites excepted only), none of the revested lands if known to be mineral in character, or withdrawn as power sites, can be held subject to exchange, matters that should not be overlooked by the field officer in submitting his general report.

SEC. 10. After due consideration of the proposal, the reports obtained thereon and such other evidence as may be submitted, the commissioner will submit to the Secretary of the Interior his report with respect to the proposal and his recommendation as to the action that should be taken thereon.

SEC. 11. On the approval of the proposal by the Secretary of the Interior, the proponent will be advised thereof and called upon to file in the General Land Office a deed, duly recorded, of the lands accepted in exchange with the abstract brought down to the date of recordation, and upon the receipt of such deed and abstract the commissioner will direct the issuance of a patent to the proponent for the lands given in exchange.

A copy of the act is inclosed herewith.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved July 17, 1918.

S. G. HOPKINS,
Assistant Secretary.

(Act omitted.)

[Reported, 47 L. D. 53]

COOS BAY WAGON ROAD LANDS—ACT OF FEBRUARY 26, 1919

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 21, 1919.

CHIEF OF FIELD DIVISION,
Portland, Oreg.:

The act of Congress (40 Stat. 1179), approved February 26, 1919, in section 1, authorizes a compromise of pending litigation between the United States and the Southern Oregon Co., upon the execution and delivery to the United States by said company of a deed satisfactory to the Attorney General of the United States, conveying all the right, title, and interest held by said company in and to the lands situated in the counties of Coos and Douglas, in the State of Oregon, and embraced within the limits of the former grant made by the United States to the State of Oregon to aid in the construction of a military wagon road from the navigable waters of Coos Bay to Roseburg, in said State, and provides that said lands shall thereupon again become part of the public domain; and further, that the execution and delivery of the said deed of reconveyance within 30 days after the approval of said act shall constitute the acceptance of said act by the Southern Oregon Co.

By letter of March 11, 1919, from the Attorney General, the department received a deed of reconveyance executed February 27, 1919, and delivered by the Southern Oregon Co. on March 10, 1919, reconveying said lands to the United States, and declared satisfactory by the Attorney General, which was inclosed to you by letter of March 18, 1919, directing you to have the same duly made of record in the counties of Coos and Douglas. From this it will be seen that by the terms of this act and the action taken thereunder by said company, the lands so reconveyed are now a part of the public domain.

TAXES

By section 2 of this act it is provided:

> That the taxes accrued, unpaid, and delinquent on the said lands on the date of the delivery of the deed provided for in section 1 shall be paid by the Treasurer of the United States upon order of the Secretary of the Interior, as soon as may be after this act becomes effective.

It is incumbent upon the department to proceed as promptly as may be in the ascertainment and payment of the taxes accrued, unpaid, and delinquent on said lands March 10, 1919, the date of the delivery of the deed provided for in section 1 of said act. By this it is meant that in the computation of the taxes to be paid, the interest, penalties, and costs lawfully incident to delinquencies are to be included therein, up to and including the date aforesaid.

The department is advised that the tax claims of the two counties have been prepared in detail, covering, it is understood, the taxes in said counties since 1908, and that copies thereof will be submitted to this office and your field division at an early date. On the receipt of these claims you will at once proceed to their adjustment, by examination of the original tax rolls and records of said counties, after a careful check of the lands reconveyed to the United States. The statutory provisions of the State in the matter of interest, penalties, and costs due in the case of delinquent taxes, should be given especial attention.

On the conclusion of your examination make a report in detail to this office, as to the claims of each county, with appropriate recommendations, submitting therewith a statement of the claims of said counties, with certificate of the proper official as to the verity of said claims.

CLASSIFICATION

By section 3 of this act it is provided:

> That the lands shall be classified and disposed of in the manner provided by the act of June 9, 1916 (39 Stat. 218), for the classification and disposition of the Oregon and California railroad grant lands.

Turning to the act last above cited for directions that will control in the matter of the classification of these lands, it is found that section 2 of that act authorizes the Secretary of the Interior, after due examination in the field, to classify said lands by the smallest legal subdivisions into three classes, as follows:

Class 1. Power-site lands, which shall include only such lands as are chiefly valuable for water power sites, which lands shall be subject to withdrawal and such use and disposition as has been or may be provided by law for other public land of like character.

Class 2. Timber lands, which shall include lands bearing a growth of timber not less than 300,000 feet, board measure, on each 40-acre subdivision.

Class 3. Agricultural lands, which shall include all lands not falling within either of the two other classes.

The classification of lands valuable for power site will be under the supervision of the Geological Survey, but the classification of the lands falling into classes 2 and 3 will be under your direction. No specific directions are requisite as to the manner of cruising and classifying the lands now in question, or the submission of reports thereon, for the reason that your practical knowledge of this matter, in connection with the classification of the Oregon and California lands makes it unnecessary.

PREFERENCE RIGHTS

It will be observed that section 3 of this act directs the disposition of these lands in the manner provided by the act of June 9, 1916, and that section 5 of the latter act provides for the disposal of agricultural lands, directing that nonmineral lands of class 3 shall be subject to entry under the general provisions of the homestead laws, excluding the rights of commutation, but awarding a preference right of entry to "any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the 1st day of December, 1913, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application." In addition to these methods of disposition found in the act of 1916, it is further provided in section 3 of the present act that:

> Such persons who, being citizens of the United States, have continuously leased from the Southern Oregon Company for a period of not less than 10 years, or who, under lease from said company, have cultivated and placed valuable improvements upon any of said lands classified as agricultural, not exceeding 160 acres to each person, shall be allowed a preference right of six months in which to purchase such lands from the United States by paying therefor the sum of $2.50 per acre, and reimbursing the United States for the taxes paid on such land: *Provided further*, That where any of such leased lands have been resided upon to the same extent and in the same manner as is required under the homestead laws since the first day of December, 1913, by any person duly qualified to enter such lands, claiming adversely to such lessee, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of his application, the claim of such settler and resident shall be superior to that of the lessee, and he shall be allowed the preference right of entry afforded actual settlers by section 5 of the act of June 9, 1916, aforesaid.

In the classification of these lands we will therefore have to provide for the protection of three classes of preferred rights: (1) Lessees who have continuously leased from the Southern Oregon Co. lands for a period of not less than 10 years; (2) lessees from said company who have cultivated and placed valuable improvements upon any of said lands; and (3) those whose claims depend upon residence and cultivation in accordance with the homestead law since December 1, 1913. You will, accordingly, in the examination in the field of these lands, pay especial attention to the claims of people who may be found thereon, indicating the location of all of their improvements on the proper subdivisions, with a full description thereof, together with a brief statement as to the alleged duration and character of the claim asserted to the land; and to the same end you will call upon the Southern Oregon Co. for a statement of all outstanding leases.

The period of six months accorded to lessees by this section, within which to perfect their claims, will begin to run from the date fixed for the opening of these lands after the classification thereof as herein directed.

The interest of the public in the early restoration of these lands requires all diligence in the matter of their classification, consistent with accurate results.

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 47 L. D. 411]

CIRCULAR NO. 705

DISPOSITION OF LANDS FORMERLY WITHIN THE OREGON AND CALIFORNIA RAILROAD GRANT AND COOS BAY WAGON ROAD GRANT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 22, 1920.

SECTION 1. The act of Congress approved June 4, 1920 (41 Stat. 758), regulating the disposition of lands formerly embraced in the grants to the Oregon & California Railroad Co. and the Coos Bay Wagon Road Co., amends prior statutory provisions with respect to said lands as follows:

(*a*) Authorizes the sale of timber on lands withdrawn as power sites.

(*b*) Protects the preference rights of settlers on lands withdrawn as power sites.

(*c*) Authorizes the exchange of Coos Bay Wagon Road lands for lands in private ownership.

(*d*) Requires applicants for the right of exchange to pay a filing fee.

SALE OF TIMBER ON POWER SITES

SEC. 2. Section 1 of the act authorizes the Secretary of the Interior, in the administration of the acts of June 9, 1916, and February 26, 1919, in his discretion, to sell the timber on lands classified and withdrawn as power sites, in the manner and at such times as provided for the sale of timber from lands classified as timberlands, with due regard to the preference rights of settlers and claimants accorded by said acts. The instructions, therefore, of September 15, 1917[a] (46 L. D. 447), governing the sale of timber on isolated tracts of Oregon and California lands, classified as timberlands (extended by instructions approved September 26, 1919, to Coos Bay Wagon Road lands), will now be equally applicable to lands classified and withdrawn as power sites under either of said acts.

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[a] Present instructions governing the sale of timber on revested Oregon and California railroad grant and Coos Bay Wagon Road grant lands are contained in Circular No. 1200, p. 1064.

PROTECTION OF PREFERENCE RIGHTS

SEC. 3. Under the proviso to section 1 of the act, if a valid claim for a preferred right of entry under section 5 of the act of June 9, 1916, or a preference right of purchase or entry under section 3 of the act of February 26, 1919, is shown to exist, for lands classified and withdrawn as power-site lands, it may be exercised therefor under the conditions specified under section 2 of the act, which provides for the disposition of lands thus entered or sold for water-power purposes upon the compensation of the owner of the land for actual damages sustained by the loss of his improvements thereon, such condition to be expressly stated in the patent.

Applications for the exercise of the preferred right of entry on lands withdrawn for power-site purposes that have been suspended on account of such withdrawal will be taken up for adjudication without delay.

EXCHANGE OF WAGON-ROAD LANDS

SEC. 4. The provisions of the act of May 31, 1918, (40 Stat. 593), authorizing the exchange of lands formerly embraced in the grant to the Oregon & California Railroad Co. for lands in private ownership, as amended by section 4 of this act, are extended by section 3 thereof to the lands embraced in the Coos Bay Wagon Road grant and reconveyed under the act of February 26, 1919; the regulations, therefore, of July 17, 1918 (46 L. D. 424), will govern the procedure in proposals for exchange of the wagon-road lands.

FILING FEES

SEC. 5. The act of May 31, 1918, is so amended by section 4 of the present act as to require applicants for the right of exchange to pay a filing fee of $1 each to the register and receiver for each 160 acres or fraction thereof embraced in proposed selections, whether now pending or hereafter tendered.

In pursuance of this authority, receivers will state an account to all proponents for the right of exchange whose applications are now pending, advising such parties that the payment of such fees is a prerequisite to the further consideration of the proposed exchange, and hereafter such fees shall be paid at the time the application for exchange is filed in the district land office.

A copy of the act of June 4, 1920, will be found herewith.

CLAY TALLMAN, *Commissioner.*

Approved June 22, 1920.

S. G. HOPKINS, *Assistant Secretary.*

(Act omitted.)

[Reported, 47 L. D. 418]

CIRCULAR No. 709

OREGON AND CALIFORNIA LANDS—SALE OF ISOLATED TRACTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 7, 1920.

To the District Land Officers at Vancouver, Wash.; Portland, Roseburg, and Lakeview, Oreg.

GENTLEMEN: Your attention is called to the act of Congress approved May 25, 1920 (41 Stat. 622), to authorize the Secretary of the Interior to dispose, at public sale, of certain isolated and fractional tracts of land formerly embraced in the grant to the Oregon & California Railroad Co., which reads as follows:

> That the provisions of section 2455, Revised Statutes, be, and the same are hereby, extended to class three of the lands formerly embraced by what are known as the Oregon and California Railroad grants, title to which was revested in the United States under the provisions of the act approved June 9, 1916 (Thirty-ninth Statutes at Large, p. 218): *Provided,* That no sales hereunder shall be made for less than $2.50 per acre, and the appraised value of the timber on the land, nor until such lands shall have been subject to homestead entry for a period of two years: *Provided further,* That the proceeds of such sales shall be applied in the manner prescribed in said act of June 9, 1916 (Thirty-ninth Statutes at Large, p. 218).

The provisions of section 2455, Revised Statutes, thus extended to these lands, are those found in said section at the date of this act, which include the amendment of March 28, 1912 (37 Stat. 77), authorizing the sale of "rough and mountainous" tracts under certain conditions. Circular No. 684, dated April 16, 1920,[b] which contains the latest regulations issued under said section as thus amended, will, therefore, be your guide in the administration of this act, in so far as applicable thereto.

The special provisions of the present act, which you must carefully observe and which are not found in said Circular No. 684, are as follows:

(1) The act applies only to lands formerly embraced in the Oregon & California Railroad grant that were revested in the United States by the act of June 9, 1916 (39 Stat. 218), that have been classified as agricultural, and restored to entry.

(2) No sale shall be made for less than $2.50 per acre, and the appraised value of the timber on the land, nor until such land shall have been subject to homestead entry for a period of two years immediately preceding the application for sale.

(3) The proceeds of the sale shall be deposited in the Treasury of the United States to the credit of the Oregon and California Land Grant Fund.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved July 7, 1920.

S. G. HOPKINS, *Acting Secretary.*

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[b] Circular No. 684 dated Apr. 16, 1920, has been superseded by Circular No. 684 dated Apr. 7, 1928, p. 742.

[Reported, 51 L. D. 631, as Circular No. 892]

CIRCULAR NO. 1103 [2]

REGULATIONS GOVERNING RESTORATION OF A PORTION OF THE LANDS TITLE TO WHICH WAS REVESTED IN THE UNITED STATES BY THE ACTS APPROVED JUNE 9, 1916 (39 STAT. 218), AND FEBRUARY 26, 1919 (40 STAT. 1179)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 10, 1926.

The Superintendent of Opening and Sale Oregon & California Railroad and Coos Bay Wagon Road grant lands:

SIR: The act approved June 9, 1916 (39 Stat. 218), revested in the United States the title to what are known as the Oregon & California Railroad grant lands; required that such lands, after examination in the field, be classified as class 1, power-site lands; class 2, timber lands; class 3, agricultural lands; provided for the reservation, subject to additional legislation, of lands of class 1; extended preference rights of entry to qualified persons who since December 1, 1913, resided on lands of classes 2 and 3, under the conditions therein prescribed; and authorized the restoration under the general provisions of the homestead laws as modified by said act of lands of class 3 and also lands of class 2, after the Secretary of the Interior has determined and announced that the merchantable timber thereon has been removed. The lands commonly known as the Coos Bay Wagon Road grant, situated in the counties of Coos and Douglas, in the State of Oregon, have been reconveyed to the United States under the provisions of the act of February 26, 1919 (40 Stat. 1179), and are subject to disposition under the provisions of said act, section 3 of which requires that said lands shall be classified and disposed of in the manner provided by the aforesaid act of June 9, 1916 (39 Stat. 218), and authorizes the purchase by lessees from the Southern Oregon Co. of lands classified as agricultural, not exceeding 160 acres to each person, under terms and conditions therein recited. The act regulating the disposition of lands formerly embraced within the grants to the Oregon & California Railroad Co. and Coos Bay Wagon Road Co., approved June 4, 1920 (41 Stat. 758), extends the preferred right of homestead entry under section 5 of the act of June 9, 1916, and the preference right of purchase or entry under section 3 of the act of February 26, 1919, to lands of class 1, withdrawn as power sites. House Joint Resolution 30, approved January 21, 1922 (42 Stat. 358), gives a preference right of homestead entry to officers, soldiers, sailors, and marines of the World War, upon the restoration to entry of public lands.

Section 4 of the act of June 9, 1916, supra, makes provision for the disposal of lands of class 2 in the manner provided for the disposal of lands of class 3, when the Secretary of the Interior has determined and announced that the merchantable timber thereon has been removed. Relinquishments having been filed by the purchasers of the timber on all such lands of class 2, as are described in the attached list, of all rights under patents for such timber, it is hereby determined and announced, for the purposes mentioned in said section 4, that the merchantable timber thereon has been removed and all said lands accordingly now fall in class 3 and become subject to disposal in the manner herein provided for the disposal of lands of that class, with the exception that the payment of $2.50 per acre shall not be required from entryman upon lands from which the timber has been removed, hereinafter designated cut-over lands.

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[2] This circular is the last one issued containing regulations governing the restoration to homestead entry of Oregon & California Railroad Grant and Coos Bay Wagon Road grant lands.

Pursuant to the authority of said acts, and the announcement made with reference to cut-over lands, it is directed that all such lands of class 3 described in the attached list, including cut-over lands, and all surveyed lands of any class, to which a preference right of homestead entry attached and is still existent, under the provisions of the said acts of June 9, 1916 (39 Stat. 218), February 26, 1919 (40 Stat. 1179), or June 4, 1920 (41 Stat. 758), whether included in such list or otherwise, situated in the Portland and Roseburg, Oreg., land districts, be restored to entry and settlement under the general provisions of the homestead laws as modified by said acts, and subject to the preference rights conferred upon officers, soldiers, sailors, and marines by H. J. Res. 30, approved January 21, 1922 (42 Stat. 358), in the manner hereinafter indicated and not otherwise. If the settlers on lands of class 2 shall not avail themselves of the preferences to which they are entitled, the lands affected thereby shall not be otherwise subject to disposition hereunder. It is further directed, in conformity with the acts approved February 26, 1919 (40 Stat. 1179), and June 4, 1920 (41 Stat. 758), that lands classified as agricultural or as valuable for power sites, within the limits of the Coos Bay wagon road grant, be subject to purchase by persons who, being citizens of the United States, continuously leased such lands from the Southern Oregon Co. for a period of not less than 10 years prior to February 26, 1919, or who under lease from said company cultivated and placed valuable improvements upon any of said lands.

SECTION 1. EXPLANATION OF WORDS AND TERMS USED HEREIN.— To avoid repetition, and for a full understanding thereof, the following words and terms, as hereinafter employed, unless otherwise indicated by the context, shall be construed to mean:

"General law": Section 2289, Revised Statutes, as amended and as modified by the act of June 9, 1916 (39 Stat. 218).

"The proviso": The proviso to section 5 of the act of June 9, 1916 (39 Stat. 218), as amended and extended by the acts of February 26, 1919 (40 Stat. 1179), and June 4, 1920 (41 Stat. 758), conferring preference rights to make homestead entries, under the conditions and limitations therein provided, upon qualified persons who since December 1, 1913, resided on revested Oregon & California Railroad and Coos Bay Wagon Road lands.

"H. J. R. 30": House Joint Resolution No. 30, approved January 21, 1922 (42 Stat. 358), giving to discharge soldiers, sailors, and marines a preferred right of entry.

"Application": A homestead application under section 2289, Revised Statutes, as amended, modified, and extended by the acts approved June 9, 1916 (39 Stat. 218), February 26, 1919 (40 Stat.

1179), and June 4, 1920 (41 Stat. 758), on the usual form, and accompanied by all payments required; whether under the general law, the proviso, or H. J. R. 30, there must be included therein or be attached thereto a sworn statement executed before an officer authorized to administer oaths in such cases, setting forth all the facts essential to the allowance of such application.

"Declaratory statement": A declaration under oath, accompanied by the proper payments, by a person entitled to exercise the right, that he intends to enter the described tract of land under the provisions of the homestead laws. Under sections 2304, 2307, and 2309, Revised Statutes, as amended, an officer, soldier, sailor, seaman, or marine, who served for not less than 90 days in the United States Army or Navy during the Civil War, the Spanish-American War, or the Philippine insurrection, and who was honorably discharged, and if he be dead, his widow if unmarried, and in case of her death or remarriage, his minor orphan children, by guardian duly appointed, may file such a declaratory statement, either in person or by agent, and under the provisions of the act of February 25, 1919 (40 Stat. 1161), the officers, soldiers, and nurses of the Army, and sailors, seamen, marines, nurses, and officers of the Navy and Marine Corps of the United States, who served for more than 90 days in the Army or Navy in connection with the Mexican border operations, or during the war with Germany and its allies, may file such declaratory statements in persons, but not by agent. Particular attention is directed to the fact that the preference rights conferred by the proviso and by H. J. R. 30 can not be supported by declaratory statements, but must be protected or exercised through homestead applications. Such declaratory statements should, therefore, not be filed until the land becomes subject to disposition under the general law.

The words "officers, soldiers, sailors, and marines," as employed in H. J. R. 30, are generic terms, and embrace privates, seamen, nurses, and all other persons, male or female, who by enlistment or otherwise were regularly enrolled in the Army, Navy, or Marine Corps of the United States, and who could not voluntarily terminate such service, but does not include civilian employees, or officers, nurses, or members of other organizations not so enrolled in the Army or Navy.

"Cut-over lands": Lands in connection with which it has been determined and announced that the merchantable timber has been removed, formerly class 2 lands, now subject to entry as agricultural lands in class 3. No charge as purchase price is made for lands designated cut-over lands.

SEC. 2. PAYMENTS REQUIRED WITH ALL CLASSES OF APPLICATIONS AND DECLARATORY STATEMENTS.—(*a*) *Applications.*—A fee of $5, if the area be less than 81 acres, and $10, if 81 acres or more; commissions at the rate of 3 per cent on lands at $2.50 per acre or a flat rate of 7½ cents per acre, together with a payment of 50 cents per acre for the area embraced in the application as first installment of the purchase price of the land; commissions at the rate of 3 per cent on a basis of $1.25 per acre on cut-over lands or a flat rate of 3¾ cents per acre, no payment as purchase price being necessary.

(*b*) *Declaratory statements.*—There must accompany a declaratory statement, which may be filed after the land becomes subject to disposition under the general law, a filing fee of $3, together with a payment of 50 cents per acre for the area included in such statement as first installment of the purchase price as to lands sold at $2.50 per acre and a similar fee of $3 as to cut-over lands, no payment as purchase price being necessary. If an entry, embracing either lands sold at $2.50 per acre or cut-over lands, is made pursuant to such statement, the fees and commissions required with other applications must be paid as mentioned in (*a*) section 2, and the moneys deposited as first installment of the purchase price with the declaratory statement embracing lands sold at $2.50 per acre will be applied.

SEC. 3. EXECUTION AND PRESENTATION OF APPLICATIONS AND DECLARATORY STATEMENTS.—(*a*) Applications must be sworn to by the applicant before the register or acting register of the United States land office for the district in which the land is situated, or before a United States commissioner, a notary public, a judge or clerk or prothonotary of a court of record, or the deputy of such clerk or prothonotary, or before any magistrate, authorized by the laws of or pertaining to the State of Oregon, to administer oaths in the county or land district in which the land lies, or if, because of geographic or topographic conditions, there is a qualified officer nearer or more accessible to the land involved, but outside the county and land district, the affidavit may be taken before such officer. After an application has been so executed it may be presented to the register or acting register of the proper land office in person, by mail, or otherwise. No person shall have pending more than one application.

(*b*) Declaratory statements filed in person must be executed before one of the officers and may be filed in the manner indicated for the execution and filing of applications. Where filed by an agent a soldier may execute the power of attorney before any officer of the United States having a seal and authority to administer oaths, but the agent's affidavit must be executed before one of the foregoing officers.

SEC. 4. PREFERENCE RIGHTS UNDER THE PROVISO.—(*a*) *Filing application.*—An application for a preference right of homestead entry under the proviso for either revested Oregon & California railroad lands or Coos Bay wagon road grant lands must be filed at the land office in which the land is situated, on or after 9 o'clock a. m., standard time, February 23, and prior to 4.30 p. m., standard time, March 14, 1927, and unless so filed all rights under the proviso will be forfeited.

(*b*) *Showing required.*—The prior exercise of the homestead right by any such applicant will be no bar to entry, but with this exception such person must make the same showing required of other applicants under the general law. A person entitled to a preference right under the proviso may enter lands of any class, but entries for lands of class 1 shall be subject to the provisions of section 2 of the act of June 4, 1920 (41 Stat. 758). The exercise of the right in any case is limited to the quarter section upon which such person has resided. He can not, therefore, embrace in his application lands of more than one quarter section. If the quarter section upon which he has resided contains no more than 1,200,000 feet, board measure, of timber he must enter the entire quarter section. He can not select therefrom the desirable subdivisions and leave unentered any portion thereof. If such quarter section contains more than 1,200,000 feet, board measure, of timber, the right is limited to the tract or lot or lots containing approximately 40 acres upon which the principal improvements of the settler are situated, and he may enter no more. He must file with his application to enter, and make a part thereof, his sworn statement showing that since December 1, 1913, he has resided on the tract applied for at least seven months in each year, and that he has improved the land, and has devoted some portion thereof to agricultural use; and he must describe such improvements and indicate such agricultural use and the area so affected; and where the entry is sought for land containing more than 1,200,000 feet, board measure, of timber on the quarter section he must show that his principal improvements are situated on the tract or lot or lots containing approximately 40 acres applied for. While a preference-right settler under the proviso must protect his rights by an application to enter, and not by filing a declaratory statement, he may, if otherwise entitled thereto, and he has entered the military or naval service of the United States, avail himself of the applicable privileges conferred by chapter 420, joint resolution approved August 29, 1916 (39 Stat. 671), and the acts approved July 28, 1917 (40 Stat. 248), October 6, 1917 (40 Stat. 391), December 20, 1917 (40 Stat. 430), and March 8, 1918 (40 Stat. 440).

(*c*) *Disposition of applications.*—Applications under the proviso will be examined and acted upon by the register or acting register as soon after their receipt as may be. They will be allowed, rejected, or suspended, as the facts may warrant. An application meeting all the requirements herein will be allowed. An application materially defective in substance, or not accompanied by proper payments, or for unsurveyed lands, or for lands the title to which is covered by an outstanding contract, will be rejected. An application accompanied by the proper payments and the showing entitling the person filing it to a preference right, will be suspended if the land embraced therein has not been classified, or the title thereto is in dispute, or is in process of adjudication.

(*d*) *Final proof.*—After entry a preference-right claimant under the proviso must comply with the law in the manner required of other entrymen, but he may submit proof at any time when he is able to show that he is entitled to final entry.

SEC. 5. PREFERENCE RIGHTS UNDER H. J. R. 30.—(*a*) Units.—To avoid confusion in the disposition of the applications, and to provide equal opportunity, as far as may be, the lands of class 3, including cut-over lands, affected hereby have been arranged into units of approximately 160, 120, 80, and 40 acres, respectively, and all persons, excepting those asserting preference rights under the proviso, shall, prior to March 15, 1927, observe such units in filing their applications to enter. No person will be allowed to embrace in his application the lands in more than one unit, nor leave unentered any portion of the unit invaded. A person who, under the law, must restrict his application to less than 160 acres, or who desires to enter a less quantity, must select a unit conforming in area to his qualifications or desires. On and after 9 o'clock a. m., standard time, March 15, 1927, any lands of class 3, including cut-over lands, restored hereunder may be entered in the form authorized by the homestead laws, without reference to the units designated herein.

(*b*) *Presentation of applications.*—Any person qualified under the general law, and who is entitled to exercise the preference right conferred by H. J. R. 30, may, on and after 9 o'clock a. m., standard time, February 23, 1927, execute and present his application to the local office for the district in which the land applied for is situated. Such application will be subject to the rights of the preferred claimants under the proviso and section 11 hereof.

(*c*) *Showing required.*—Any person seeking to avail himself of the special privileges conferred by H. J. R. 30 must show, either as a part of his application, or by an accompanying statement sworn to before an officer qualified to execute homestead applications hereunder, that he served in the United States Army, Navy, or Marine Corps on and after April 6, 1917, and prior to March 3, 1921. He must give the approximate period of service, and name the unit or units in which such service was performed, and that on (stating date), he was honorably separated or discharged from such service, or placed in the Regular Army or Navy Reserve, and that he did not refuse to perform such service or to wear the uniform thereof. He should attach to his application a copy of his honorable discharge or separation, or the order placing him in the Regular Army or Navy Reserve, as the case may be, certified as correct by an officer with a seal, but he will not be required to file the original order of discharge or transfer. If he has lost his discharge or is otherwise unable to secure a copy thereof, he must, in a verified statement, explain fully why such copy was not furnished.

(*d*) *Disposition of applications.*—All applications presented hereunder received by the register or acting register on and after 9 o'clock a. m., standard time, February 23, 1927, and prior to 4.30 p. m., standard time, March 14, 1927, shall be treated as filed simultaneously, and where there is no conflict such application, if in proper form and accompanied by the required payments, will be allowed, on March 15, 1927. If such applications conflict in whole or in part, the rights of the respective applicants will be determined by a public drawing, to be conducted under the supervision of the superintendent of sale, at the United States land offices in which the land is situated, beginning at 10 o'clock a. m. on March 16, 1927, at the Portland land office, and on March 18, 1927, at the Roseburg land office. The names of the persons who presented the conflicting applications will be written on cards, and these cards shall be placed in envelopes upon which there are no distinctive or identifying marks. The envelopes shall be thoroughly and impartially mixed, and after being mixed shall be drawn one at a time by some disinterested person. As the envelopes are drawn, the cards shall be removed and numbered, beginning with No. 1 and fastened to the applications of the proper persons, which shall be the order in which the applications shall be acted upon and disposed of. If an application can not be allowed for any part of the land applied for, it shall be rejected. If it may be allowed for a part, but not for all the land applied for, the applicant shall be allowed 30 days from receipt of notice within which to notify the register or acting register what disposition to make thereof; during such time he may request that his application be allowed for the land not in conflict, and rejected as to the land in conflict, or that it be rejected as to all the land applied for; or he may apply to have the application amended to include other lands which are subject to entry, and to inclusion in his application, provided he is the prior applicant. If an applicant fails to notify the register or acting register what disposition to make of the application, it will be rejected as to all the land applied for. Applications presented on and after 9 o'clock a. m., March 15, 1927, will be received and noted in the order of their filing, and will be acted upon and disposed of in the usual manner, after all such applications presented before that date have been acted upon and disposed of. Applications to enter (except under the proviso) filed within six months from this date, in conflict with unperfected purchase claims under section 11 hereof, will be suspended to await action on such claims.

(*e*) *Disposition of moneys.*—Moneys tendered with applications on or before March 14, 1927, will be deposited by the register or acting register of the local land office to his official credit and promptly accounted for. When a homestead application is allowed in whole or in part, the sums required as fees, commissions, and purchase money will be properly applied, and any moneys in excess of the required amount will be returned to the applicant. Moneys tendered with applications which are rejected in whole will be returned. If an applicant fails to secure all the land applied for, and amends his application to embrace other lands, the moneys theretofore tendered will be applied on account of the required payment under the amended application. If it is not sufficient the applicant will be required to pay the deficiency, and if it is more than sufficient the excess will be returned. Moneys returned to applicants will be by official check of the register or acting register. Moneys tendered with applications presented after March 14, 1927, will be deposited by the register or acting register in the usual manner.

(*f*) *Termination of preference right period under H. J. R. 30.*—The 91-day preference right period authorized by H. J. R. 30 begins on March 15, the first day on which applications thereunder may be allowed, and terminates on June 13, 1927.

SEC. 6. APPLICATIONS UNDER THE GENERAL LAW.—Beginning 9 o'clock a. m., standard time, June 14, 1927, lands of class 3, including cut-over lands, restored hereunder will become subject to disposition under the general law. To the end that the applications and declaratory statements under the general law may be disposed of in an orderly manner, such applications and declaratory statements may be filed in the office of the district in which the land is situated on and after 9 o'clock a. m., June 3, 1927, and such applications and declaratory statements, together with those filed or presented at 9 o'clock a. m., standard time, June 14, 1927, shall be treated as filed simultaneously and disposed of in the manner required by section 5 (*d*) hereof, the drawings, if necessary hereunder, to be conducted at the several land offices beginning at 10 o'clock a. m., standard time, June 16, 1927. Applications and declaratory statements under the general law will be rejected if found to conflict with entries or applications under H. J. R. 30 filed prior to June 14, 1927. When the lands become subject to entry under the general law, those entitled to preference rights under the proviso or H. J. R. 30, and who failed to avail themselves of such preference rights, may proceed on terms of equality with other qualified persons. Moneys deposited with declaratory statements as part of the purchase price, will, if such declaratory statements are allowed, be retained until such time as entry may be made thereunder, and if no entry be made within the time prescribed by law, such moneys will then be returned.

Sec. 7. Settlement before entry.—On and after 9 o'clock a. m., standard time, June 20, 1927, rights to lands of class 3, including cut-over lands, restored hereunder may be initiated by settlement before entry in the manner recognized by the general provisions of the homestead laws.

Sec. 8. Compliance with law after entry.—*Final proof.*—Section 2301, Revised Statutes, does not apply, and no entry made under the provisions hereof may be commuted. No patent will be issued until the entryman can show that he has resided on the land for three years in the manner required by the homestead laws and has cultivated a sufficient area thereof to demonstrate his good faith. Such an entryman may apply military or naval service in lieu of such residence to the extent authorized by the homestead laws, and he may otherwise enjoy the privileges accorded to other entrymen under such laws. The act approved February 25, 1919 (40 Stat. 1161), extends the provisions of section 2305, Revised Statutes, touching credit for military service in lieu of residence under the homestead law, to all such service rendered in connection with the Mexican border operations, or during the war with Germany and its allies.

Sec. 9. Contests.—Entries hereunder, whether allowed under the proviso, H. J. R. 30, or the general law, will be subject to contest for any reasons affecting their legality in the same manner that has been or may be provided hereafter for other entries under the homestead laws.

Sec. 10. Final payments.—When final proof is submitted, the entryman must pay final commissions at the rate of 3 per cent on lands sold at $2.50 per acre, together with the last installment of the purchase price, to wit, $2 per acre for the area included in the entry and final commissions at the rate of 3 per cent on a basis of $1.25 per acre as to cut-over lands, no payment as purchase price being necessary.

Sec. 11. Sales of agricultural and power-site lands, Coos Bay Wagon Road Grant.—(*a*) *Lessee defined.*—A lessee within the meaning of section 3 of the act of February 26, 1919 (40 Stat. 1179), and the proviso to section 1 of the act approved June 4, 1920 (41 Stat. 758), is one who, being a citizen of the United States, was at the date of the approval of the act holding under lease from the Southern Oregon Co. agricultural or power-site lands. Such lessees are of two classes: (1) Those who have for 10 years prior to February 26, 1919 (40 Stat. 1179). whether claiming under the 10-year who had cultivated lands while under lease and placed valuable improvements thereon.

(*b*) *Lands subject to purchase.*—The lessee under the act of February 26, 1919 (40 Stat. 1179), whether claiming under the 10-year clause or under the provision relating to cultivation and improvements, can not purchase lands of classes 1 and 2. He can secure under such act only lands of class 3. The proviso to section 1 of the act approved June 4, 1920 (41 Stat. 758), authorizes a lessee under the act of February 26, 1919 (40 Stat. 1179), to purchase lands of class 1 (power-site) where such lands do not contain 300,000 feet of timber on the 40-acre tract; but lands so purchased are subject to section 2 of the aforesaid act of June 4, 1920 (41 Stat. 758), and the patent issued to the purchaser shall so recite. The lessee can not, whether under the act of February 26, 1919 (40 Stat. 1179), or the act of June 4, 1920 (41 Stat. 758), purchase lands containing 300,000 feet of timber on a 40-acre tract. While a lessee may not under any circumstances purchase lands of class 2, he may, if he can make the showing required of a settler by paragraph *b*, section 4 hereof, exercise his rights as such settler to lands of any class. Where a lessee exercises the right of a settler in strict conformity with paragraph *b*, section 4 hereof, he will not forfeit his right to purchase other lands of classes 1 and 3 in the manner otherwise provided herein.

(*c*) *Area subject to purchase.*—The area that may be purchased by a lessee, whether under the act of February 26, 1919, or June 4, 1920, or both acts, is limited to 160 acres. Where the lease is held by two or more persons, or by a corporation, the purchase must be by the joint owners or by the corporation. The individual members of the firm or association and the stockholders of the corporation can not make separate purchases. A single right only exists under the lease and is limited to 160 acres.

(*d*) *Contiguity of lands.*—Where the lease covers more than 160 acres of contiguous lands subject to purchase the lessee must select contiguous tracts, but he may take incontiguous tracts where necessary to make up the full quantity of 160 acres.

(*e*) *Tracts partially covered by lease.*—The right to purchase is confined to leased lands, but where the lease covers a part only of a legal subdivision the lessee will be permitted to purchase if more than one-half of such subdivision is included in the lease; otherwise the right of purchase will be denied.

(*f*) *Termination of lease prior to February 26, 1919.*—Where a lease was terminated prior to February 26, 1919, no right to purchase exists, even though such lease may have continued for a period greater than 10 years. Where, after the termination of an old lease, a new lease was given, the lessee holding at the date of the approval of the act will be recognized, provided he is otherwise within the provisions thereof.

(*g*) *Showing required by lessee.*—Any lessee must show that he is a citizen of the United States and was such on February 26, 1919, and that the land was free from adverse settlement claim within the meaning of the second proviso of section 3 of the act of February 26, 1919 (40 Stat. 1179). If he claims under the 10-year clause, he must show that he held the lease for the period mentioned; if under the provision relating to cultivation and improvements he must by affidavit, corroborated by two witnesses, show all the facts with reference to cultivation and improvements necessary to establish his claim.

(*h*) *Preference period for lessee.*—The lessee will be allowed six months from the date hereof within which to complete his proofs and make the required payments, but he must on or prior to March 14 file his application to purchase, with a specific description of the land, not exceeding 160 acres. Such application must be sworn and subscribed to before an officer authorized to administer oaths and using a seal. In order to avoid confusion, the lessee is urged to file his application at the earliest day practicable.

(*i*) *Payment.*—The payments required are $2.50 per acre, and the amount of taxes on the land paid by the Government under the provisions of the act of February 26, 1919 (40 Stat. 1179). Upon request, the register or acting register, United States land office, Roseburg, will advise the lessee the amount necessary to reimburse the Government for taxes paid on the lands included in his application to purchase.

Very respectfully,

William Spry, *Commissioner.*

Approved December 10, 1926.

E. C. Finney,
First Assistant Secretary.

(Schedule omitted.)

[Reported, 52 L. D. 407]

Circular No. 1156 [3]

RECREATIONAL LAW EXTENDED TO REVESTED OREGON AND CALIFORNIA RAILROAD AND COOS BAY WAGON ROAD GRANT LANDS—SUPPLEMENTAL REGULATIONS UNDER CIRCULAR NO. 1085 [4]

Department of the Interior,
General Land Office,
Washington, June 18, 1928.

Registers, Roseburg and Lakeview Land Offices, Oreg.

Gentlemen: The act of April 13, 1928 (45 Stat. 429), extending the provisions of the recreational act of June 14, 1926 (44 Stat. 741), to revested Oregon and California Railroad and Coos Bay Wagon Road grant lands, reads as follows:

> That the provisions of the act of Congress approved June 14, 1926 (Forty-fourth Statutes at Large, p. 741), entitled "An act to authorize acquisition or use of public lands by States, counties, or municipalities for recreational purposes," are hereby extended to former Oregon and California Railroad grant lands revested in the United States under the act of June 9, 1916 (Thirty-ninth Statutes at Large, p. 218), and to former Coos Bay Wagon Road grant lands reconveyed to the United States under the act of February 26, 1919 (Fortieth Statutes at Large, p. 1179): *Provided*, That any lands leased hereunder shall thereafter be exempt from any further claim by the county wherein such leased lands are located for payment of moneys, the equivalent of taxes, as authorized under the relief act of July 13, 1926 (Forty-fourth Statutes at Large, p. 915): *Provided further*, That only such lands as are within or contiguous to the former limits of said grants may be accepted in an exchange hereunder for such former grant lands and that all lands and timber secured by virtue of any

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[3] See Circular No. 1122, p. 1542.

[4] Regulations governing recreational sites were originally issued as Circular No. 1085 dated July 23, 1926. The regulations were subsequently incorporated in Circular No. 1122, approved Apr. 27, 1927.

such exchange shall be disposed of in accordance with the terms and provisions of said revestment act of June 9, 1916: *And provided further*, That no sales of lands classified under said act of June 9, 1916, as of class 3, or agricultural lands, shall be made for less than $2.50 per acre, and of lands of class 2, or timberlands, for less than the appraised value of the timber thereon.

SEC. 2. That all moneys received from or on account of any lands leased or sold hereunder shall be applied in the manner prescribed by the aforesaid acts of June 9, 1916, and February 26, 1919.

The existing regulations approved July 23, 1926, Circular No. 1085 (51 L. D. 505), as issued pursuant to the recreational act of June 14, 1926, with the following supplemental instructions added thereto, are hereby adopted for the purpose of carrying into effect the provisions of said act of April 13, 1928:

Revested Oregon and California Railroad and Coos Bay Wagon Road grant lands.—The said act of April 13, 1928, is applicable only to such former grant lands revested in the United States under the acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), which have been reported or classified under said act of 1916 as either timber or agricultural in character, lands classified thereunder as chiefly valuable for water-power sites and reserved for that purpose being excepted from the operation thereof.

Any of such revested lands leased for recreational purposes shall thereafter be exempt from any further claim by the county wherein such leased lands are located for payment of moneys, the equivalent of taxes, as authorized under the act of July 13, 1926 (44 Stat. 915).

Only such lands as are within or contiguous to the former limits of said grants may be accepted in exchange for such grant lands and all lands and timber secured by virtue of any such exchange shall be disposed of in accordance with the terms and provisions of said revestment act of June 9, 1916.

No sale of lands classified under said act of June 9, 1916, as of class 3, agricultural lands, shall be made for less than $2.50 per acre and of lands of class 2, timberlands, for less than the appraised value of the timber thereon.

All moneys received from or on account of any lands leased or sold or acquired through exchange under said act of April 13, 1928, shall be applied in the manner prescribed by the said acts of June 9, 1916, and February 26, 1919.

When application is filed for any revested lands classified or reported as timber in character the district cadastral engineer at Portland, Oreg., may also, if necessary, be instructed to submit report and recommendation thereon, in addition to the examination of such land and report which the division inspector may be instructed to make in accordance with Circular No. 1085.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved June 18, 1928.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 1200

INSTRUCTIONS GOVERNING THE SALE OF TIMBER ON REVESTED OREGON & CALIFORNIA RAILROAD AND COOS BAY WAGON ROAD GRANT LANDS IN THE STATE OF OREGON

[Superseding Circular No. 928]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 29, 1929.

REGISTERS, *Lakeview and Roseburg, Oreg.*

GENTLEMEN: Under the provisions of the acts of June 9, 1916 (39 Stat. 218), and February 26, 1919 (40 Stat. 1179), certain lands, formerly within the Oregon & California Railroad and Coos Bay Wagon Road grants, revested in the United States. Section 2 of the act of June 9, 1916, provides for the classification of all lands revested thereunder into three classes, to wit: First, power-site lands; second, timber lands; and third, agricultural lands. Section 4 of said act of 1916, as amended by the act of May 17, 1928 (45 Stat. 597), reads as follows:

> The timber on lands of class two shall be sold for cash by the Secretary of the Interior, in cooperation with the Secretary of Agriculture, or otherwise, to citizens of the United States, associations of such citizens, and corporations organized under the laws of the United States, or any State, Territory, or District thereof, at such times, in such quantities, and under such plan of public competitive bidding as in the judgment of the Secretary of the Interior may produce the best results: *Provided*, That said Secretary shall have the right to reject any bid where he has reason to believe that the price offered is inadequate, and may reoffer the timber until a satisfactory bid is received: *Provided further*, That upon application of a qualified purchaser that any legal subdivision shall be separately offered for sale such subdivision shall be separately offered before being included in any offer of a larger unit, if such application be filed within ninety days prior to such offer: *And provided further*, That said timber shall be sold as rapidly as reasonable prices can be secured therefor in a normal market.
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> The Secretary of the Interior shall as soon as the purchase price is fully paid by any person purchasing under the provisions of this section issue to such purchaser a patent conveying the timber and expressly reserving the land to the United States. The timber thus purchased may be cut and removed by the purchaser, his heirs or assigns, within such period and under such rules, regulations, and conditions as may be prescribed by the Secretary of the Interior, which period and conditions shall be designated in the patent; all rights under said patent shall cease and terminate at the expiration of said period: *Provided*, That in the event the timber is removed prior to the expiration of said period the Secretary of the Interior shall make due announcement thereof, whereupon all rights under the patent shall cease.
>
> No timber shall be removed until the issuance of patent therefor. All timber sold under this act shall be subject to the taxing power of the States, apart from the land as soon as patents are issued as provided for herein.

Section 3 of the act of February 26, 1919, provides that all lands revested thereunder shall be classified and disposed of in the manner provided by the act of June 9, 1916, for the classification and disposition of the Oregon & California Railroad grant lands. The act of June 4, 1920 (41 Stat. 758), authorizes the sale of timber on lands of class 1, or lands classified and withdrawn as chiefly valuable for water-power sites. The act of May 17, 1928 (45 Stat. 597), amending section 5 of the act of June 9, 1916, authorizes the sale of timber on lands of class 3, or lands classified as agricultural, which at the time application to purchase the timber is filed have been subject to entry for a period of two years and are not embraced in an application or entry, which is held to include lands withdrawn as chiefly valuable for power sites but restored to entry subject to section 24 of the Federal water power act. Pursuant to the provisions contained in said acts, the following instructions are issued to govern timber sales made hereafter on Oregon & California Railroad grant lands the title to which revested in the United States under the act of June 9, 1916, and to the Coos Bay Wagon Road grant lands reacquired under the act of February 26, 1919:

1. Prospective purchasers of timber on Oregon & California Railroad or Coos Bay Wagon Road grant land of classes 1 and/or 2 only should file application to purchase with the district cadastral engineer, 619 Post Office Building, Portland, Oreg. However, any person desiring to purchase the timber on lands, the whole or any subdivision of which has been classified as of class 3, or agricultural land, and restored to entry should file application to purchase, in duplicate, in the local land office of the district in which the land is located, either at Roseburg or Lakeview, Oreg. Proper blank forms to be used in applying to purchase timber and information with respect to the quality, quantity, and appraised price of timber on any given tract may be obtained from the district cadastral engineer upon request.

2. Upon receipt of an application to purchase timber involving agricultural lands, the register will note the date and hour of receipt thereof upon both the original and duplicate, the duplicate to be promptly forwarded to the district cadastral engineer with report as to the status of the land. Where application to make entry of such land is filed subsequent to the filing of the timber application, but prior to the date on which the timber is to be offered, you will allow the homestead application, if otherwise regular, noting thereon and advising the entryman that the same is subject to the right of the United States to sell the timber on the land pursuant to the timber application theretofore filed and subject also to the right of the purchaser, his heirs or assigns, to cut and remove such timber at any time within 10 years from date of issuance of the timber patent. Where application to make entry of such land is filed after the timber thereon has been offered for sale and a bid or bids received therefor you will allow the same, if otherwise regular, noting thereon and advising the entryman that the entry is subject to the right of the successful bidder for the timber on the land, his heirs or assigns, to cut and remove the same at any time within 10 years from date of issuance of the timber patent. Where any homestead application has been allowed under either of the two conditions above mentioned such homestead entry, in the event of refusal for some reason to offer the timber for sale, or if offered and no bid is received or the bid received is rejected by the Secretary of the Interior, shall thereupon be free from the conditions and reservations theretofore imposed as to such timber the same as though no timber application had been filed.

3. Timber sales will be authorized in the General Land Office by one letter addressed to the Secretary of the Interior, in which all the facts appertaining to the proposed sale will be stated, accompanied by another letter, for the approval of the department, addressed to the register of the local land office where the sale is to

be held, giving the names of the applicants and such other facts as may be deemed appropriate, together with authorizations to the newspapers for the publication of the notice prepared and submitted therewith for that purpose. Publication of said notice will then be made covering a period of not less than 30 days in at least three newspapers of general circulation in the State of Oregon, one of which shall be in the county wherein the land is situated. If daily papers are designated the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues; and if semi-weekly, in either issue for five consecutive weeks. The notice as published shall announce the intention to offer at public sale, on a day and at an hour specified, at the district land office where the land is located, the timber described in such notice and shall also state the cruiser's estimate of the timber on each 40-acre tract, appraised price thereof, and the terms of sale.

4. The sale will be at public auction or outcry at the district land office of the district within which the land is situated and conducted by the register of such office.

5. The right of purchase at such sale will be limited, in accordance with the acts, to citizens of the United States, association of such citizens and corporations organized under the laws of the United States, or any State, Territory, or district thereof. Native-born citizens should file an affidavit to that effect with the register when making the first purchase and naturalized citizens will be required to furnish either the original certificate of naturalization, or duly certified or attested copy thereof, which copy, if of a certificate of naturalization issued after September 26, 1906, must be on the form prescribed by the Bureau of Naturalization.[5] Corporations must furnish either the original certificate of incorporation, a duly certified or attested copy thereof, or a certificate of the proper officer of the State, Territory, or district in which the company is incorporated, certifying as to the company's incorporation.

6. The register, before offering any portion of the timber advertised, shall advise all intending purchasers that the patent for the timber will contain a clause fixing the period within which said timber must be cut and removed by the purchaser, his heirs or assigns, at 10 years and will also recite the conditions of a contract which the purchaser must enter into with the Government regarding the cutting of the timber and removal of the slash and other forest débris resulting therefrom. It should also be announced that no timber is to be removed until the issuance of a patent therefor. Before the sale inquiry should be made as to whether any person present desires the timber on any legal subdivision advertised to be separately offered before its inclusion in any offer of a larger unit, and if such request is made, the timber on the land thus designated may be so offered.

7. No timber shall be sold for less than the appraised price; and any bid may be rejected by the Secretary of the Interior, if it is by him deemed inadequate.

8. The timber shall be sold to the highest bidder, subject to the approval of the Secretary of the Interior. The entire purchase price bid must be paid on the date of sale to the register in cash, currency, or certified checks, when drawn in the manner authorized, who will

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[5] See Circular No. 1202, p. 353.

issue his receipt thereof and hold the same as other "unearned moneys" until notified of the approval of the sale. Upon receipt of such notice the money shall be applied to the credit of the "Oregon and California land-grant fund," if for timber sold on Oregon & California Railroad land, or "the Coos Bay Wagon Road grant fund," if for timber sold on the Coos Bay Wagon Road grant. If for any reason a bid is rejected, the register, upon receipt of notice of such rejection, will return the money.

9. Upon acceptance by the register of the local land office of a bid and before cash certificate can issue the successful bidder must within 30 days from the date of such acceptance enter into a contract with the Government through the Commission as the General Land Office, acting as its agent, subject to the approval of the Secretary of the Interior. Said contract requires that the purchaser of the timber, his heirs or assigns, shall cut and remove the timber and dispose of all brush, tops, lops, and other forest débris in accordance with the terms thereof, and must be accompanied by a bond with proper sureties thereupon, the penalty of said bond to be of an amount to be determined in accordance with section 10 of these regulations. Blank forms to be used in executing the contract and bond as required herein have been approved by the Secretary of the Interior and copies of the same will be furnished either by the district cadastral engineer or the register of the local land office, at either Lakeview or Roseburg, Oreg. The bond shall be conditioned upon the faithful performance of the above referred to contract and upon the observance of the rules and regulations herein set forth. Bonds should be prepared and executed in accordance with the regulations of the department governing the same. Such regulations will be found with the bond.

Failure of the bidder whose bid has been accepted by the register to execute and file the required contract and bonds within the specified time will be deemed sufficient ground for rejection of his bid, and in the event of such failure the register will submit to the General Land Office a full report of all facts in the case, with such record evidence as may be pertinent thereto.

10. The amount of the bond required under the foregoing paragraph will be determined as follows:

(*a*) Two hundred and fifty dollars where the timber on a single subdivision of 40 acres, more or less, is sold.

(*b*) One hundred and fifty dollars for each legal subdivision where the timber on more than one but less than five legal subdivisions is sold to one party or company: *Provided*, *however*, That where the total area of such subdivisions is 40 acres or less a bond in the sum of $250 will be required.

(*c*) One hundred and twenty-five dollars for each legal subdivision where the timber on more than four legal subdivisions is sold to one party or company: *Provided*, *however*, That where the total area of such subdivisions is not in excess of 160 acres but more than 40 acres, a bond in the sum of $600 will be required.

11. The register, upon the filing in his office of the required contract and bond, duly executed, will immediately issue cash certificate, if no objection be found, which certificate should give the name and address of the purchaser, proper description of the land, including

area thereof, the serial and receipt numbers, amount of purchase money and commissions paid, the act under which the land revested and also the act of June 4, 1920 (41 Stat. 758), in the case of power-site land and the act of May 17, 1928 (45 Stat. 597), in the case of restored agricultural land.

12. Persons who purchase timber at such sale shall be required to pay, in addition to the purchase price, a commission of one-fifth of 1 per centum thereof to be placed to the credit of the fund to which the purchase money is credited.

13. The register will forthwith transmit to the General Land Office, by special letter, the cash certificate issued, accompanied by the contract and bond, together with a report in duplicate of the proceedings under the sale, showing: (1) the land on which the timber was sold; (2) the names of the purchasers; and (3) the amounts received therefor, together with such other details as may seem properly appropriate thereto. As soon as the sale, contract, and bond have been approved by the department, the General Land Office will advise you of that fact, and patent will then be issued and transmitted in the usual way.

14. The register of public moneys will, in addition to his regular abstracts, render monthly, for each county, in case of timber sales therein, a separate abstract, in duplicate, Form 4–103, reporting thereon the date of the application of the money, the receipt and serial numbers, the name of the purchaser, together with a description of the land involved and the amount of purchase money, using more than one line, when necessary, for each item. Commissions should be shown on this abstract on a separate line. Notations showing the county in which the land is situated should also be made upon the receipt and papers pertaining to the sale.

15. Circulars of September 15, 1917 (46 L. D. 447), September 26, 1919 (47 L. D. 381), and April 14, 1924 (50 L. D. 376), are superseded hereby.

Very respectfully,

C. C. Moore,
Commissioner.

Approved July 29, 1929.

John H. Edwards,
Assistant Secretary.

PATENTS

[Reported, 8 C. L. O. 10]

CANCELED PATENTS—PROCEEDINGS TO DELIVER PATENTS HERETOFORE CANCELED AND AT PRESENT ON FILE IN THE GENERAL LAND OFFICE

Department of the Interior,
Washington, February 28, 1881.[1]

The Commissioner of the General Land Office.

Sir: I am in receipt of your request of January 12, for instructions under the rule established by the decision of the Supreme Court in case of U. S. ex rel McBride *v.* Secretary of the Interior, to the effect that the patentee of lands takes the title of the Government by matter of record, and that after the record is complete, "there remain" but "the duty simply ministerial, to deliver the patent to the owner."

I have carefully considered the suggestions presented by you, touching the scope and purpose of the judgment of the court, with respect to the inquiry whether or not the true character or nature of a patent, as void, or voidable only, shall first be determined in this department, and the delivery made to depend upon the decision reached.

From the opinion in the case, it clearly appears to me that the court intended to insist upon the doctrine that, unless manifestly and notoriously void upon its face, the patent of the Government must be from the date of its record treated as the property of the grantee, and beyond the jurisdiction of this department to withhold.

This being so, the question is narrowed to the one inquiry respecting your duty touching the delivery of those patents heretofore withheld and canceled, either under the present or a former administration, and the manner in which, precedent to delivery, the effect of the unauthorized cancellation shall be removed from the patent and the record thereof in your office.

Respecting the delivery, I apprehend that there can be no question upon the proposition that these patents fall into the same place in the administration of the business of your office that they would have held had no proceedings looking to their cancellation been initiated. Those proceedings being entirely extraneous to the jurisdiction, and consequently void, have no effect upon the instrument, and do not vary the rule properly governing its tradition or transmission to the grantee. The same formalities should be observed as in ordinary cases. The right of the party to its possession must be shown, and the surrender of the usual receipts, or due accounting for their loss, must be required.

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[1] Modified by departmental instructions of Feb. 2, 1927, p. 1074.

To prepare the patents for such delivery, it will be proper to indorse upon them, as they shall be demanded, a memorandum citing the case of McBride, and its authority as affecting the validity of the act of cancellation, in order to remove any improper or unauthorized cloud upon the title purporting to be conveyed.

This should be in substantially the following form: " Delivered under secretary's instructions of February 28, 1881—in accordance with the decision of the United States Supreme Court in McBride *v.* Schurz, October term, 1880.

——— ———, *Commissioner.*

"______ ______."
(Date.)

This indorsement should not be made upon any patent surrendered up to be canceled by consent of the grantee, or the acceptance of which has been refused, nor upon a cancellation by order of a court of competent jurisdiction, nor upon a patent vacated for the mere purpose of correcting a clerical error, or for other like cause—such cases being excepted out by the reasoning of the court from the general doctrine of the decision.

The same indorsement should be made upon the patent record, and appear in its proper connection when officially certified by you for purposes of evidence.

C. SCHURZ, *Secretary.*

INFORMATION RELATING TO LAND PATENTS [2]

All patents issuing from the General Land Office are issued in the name of the United States, are signed by the President, and countersigned by the recorder of the General Land Office, and are recorded in the office in books kept for the purpose. (Sec. 458, Rev. Stat.)

Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his death before making proof, to the statutory successor making the proof, as provided by law.

The recitals and description of land in patents will in all cases follow the register's certificate of entry or location, as prescribed by law.

When patents are ready for delivery, they will in all cases be transmitted to the local office at which the location or entry was made, where they can be obtained by the party entitled thereto, upon surrender of the duplicate receipt, or certificate, as the case may be, unless the duplicate shall have been previously filed in this office with a request that the patent be delivered as requested by the person sending the same; and in no case will the patent be delivered, either from this or the local office, except upon receipt of such duplicate, or, in case of its loss from any cause, upon the filing in lieu of the same of an affidavit made by the present bona fide owner of the land, accounting for the loss of the same, and also showing ownership of the tracts or a portion thereof embraced in the patent.

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[2] Extract from circular of Jan. 25, 1904, not carried in this publication.

It is provided in section 8 of the act of March 3, 1891 (26 Stat. L. 1093), that suits by the United States to vacate and annul any patent previously issued shall only be brought within five years from the passage of said act, and suits to vacate and annul patents thereafter issued shall only be brought within six years after the date of the issue of such patents.

By act of March 2, 1896 (29 Stat. 42), the time within which such suits might be brought, so far as regards patents issued under a railroad or wagon-road grant, was extended so as to admit of bringing suit in such cases within five years from the passage of the act in cases of patents issued prior thereto, and in cases of patents issued thereafter within six years after the date of the issuance of the patents, with a provision protecting the titles of bona fide purchasers of such lands.

[Reported, 43 L. D. 271]

CIRCULAR No. 327

COAL RESERVATION—SUPPLEMENTAL PATENTS—ACT OF APRIL 14, 1914 (38 Stat. 335)[3]

Department of the Interior,
General Land Office,
Washington, June 3, 1914.

Registers and Receivers, United States Land Offices.

Sirs: The act of Congress approved April 14, 1914 (38 Stat. 335), reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and he is hereby, authorized and directed, in cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation.

The act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent has issued, or may hereafter issue, containing a reservation of the coal in the land to the United States under the act of March 3, 1909 (35 Stat. 844), or the act of June 22, 1910 (36 Stat. 583), such land having subsequently been finally classified as noncoal in character.

This office will list the cases and issue the patents with such expedition as may be possible with the clerical force available for the purpose. Therefore application for such supplemental patent will not be necessary, and will receive no special action if filed.

The patents will be transmitted to you, and follow the course applicable to original patents, including notice of receipt to the patentee and notation on the serial register and against the record of coal reservation on the tract books and plats. The patents may be delivered to the patentees or the present owners of the land upon their filing with you an affidavit of ownership.

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[3] See instructions of July 5, 1924, p. 1388.

You will give this circular such publicity as may be possible without incurring expense.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

A. A. JONES,
First Assistant Secretary.

CIRCULAR No. 378

FULL NAMES SHOULD APPEAR IN ENTRIES AND FINAL CERTIFICATES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Washington, January 29, 1915.

Registers and Receivers, United States Land Offices.

SIRS: That patents may issue in the full and proper names of claimants, you will exercise care to obtain the full names of all claimants who submit final proofs. Patents issued to claimants by abbreviations of their names (such as "Ed," "Al," "Joe," etc.) and by mere initials often cause trouble at a future time for the patentees and those claiming under them.

While you would not be warranted in rejecting an application to enter public land on the ground that the applicant did not sign his name in full, you should, without jeopardizing the rights of the applicant, use every effort to obtain the name, attaching to the imperfectly signed application any statement as to the name which may be later filed.

A copy hereof should be sent to each proof-taking officer in your respective districts.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 457

INSTRUCTIONS TO APPLICANTS FOR PERFECT PATENTS IN THOSE CASES IN WHICH THE RECORDS DO NOT SHOW THE SIGNING OF THE ORIGINALS BY THE PROPER OFFICERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 2, 1926.

The act of May 10, 1800 (2 Stat. 73), which authorized the President of the United States to issue patents for public lands, provided that said patents should be countersigned by the Secretary of State and recorded in books kept in his office. This record consists of a copy of the entire patent, including the signatures of the officials who signed the original.

The act of April 25, 1812 (2 Stat. 716), provided (sec. 8) that land patents should be signed by the President of the United States and countersigned by the Commissioner of the General Land Office.

The acts of July 4, 1836 (5 Stat. 107), and March 3, 1841 (id. 416), authorized the President to appoint a secretary to sign his name to land patents, and designated the recorder of the General Land Office to countersign them and affix the seal.

In recording many of the patents issued in the early years it was the practice, for some reason not now evident, either to omit altogether from such record the names of the officers whose duty it was to sign and countersign the patents, or to insert merely their initials. In some cases the name or initials of but one of the officers appears in the patent record.

March 3, 1843 (5 Stat. 627), Congress passed an act providing that literal exemplifications of patent records which did not contain the full names of the proper officers should be held to be of the same validity as though the names of said officials had been fully inserted in the record. It was the understanding of this office that the passage of this act cured these defective records, so far as their value as evidence was concerned, until the United States Supreme Court rendered its decision in the case of McGarrahan *v.* Mining Company (96 U. S. 316), at the October term, 1877. The court, in commenting upon the act of March 3, 1843, said:

> The record to prove a valid patent must still show that these provisions of the law were complied with. The names need not be fully inserted in the record, but it must appear in some form that the names were actually signed to the patent when it issued. If they are partially inserted in the record it will be presumed that they fully appeared in the patent, but no such presumption will be raised if no signature is shown by the record. Here no signature does appear, and consequently none will be presumed.

The principle thus announced was followed by the court in numerous cases, which it is unnecessary to cite.

Under this decision, therefore, patent records which do not contain at least the initials of the officers whose duty it was to sign and countersign the original patent are not considered legal evidence of the issuance of a patent. If, however, the original patent itself was properly signed and countersigned as required by law, it operated to vest in the patentee title to the land described, notwithstanding the imperfect and incomplete record.

It is now the practice of the office not to furnish certified copies from such records unless specifically requested to do so. Instead, the owner of at least a portion of the land involved can secure the issuance of a perfect patent, in the name of the original patentee, by filing in this office his sworn application therefor, accompanied by evidence of such ownership in the form of a certificate of the recorder of deeds of the county in which the land is located. In his application it must be clearly shown (1) that no patent conveying any portion of the land has ever been recorded in the county in which it is embraced at the date of the application, or in any county in which it has been embraced since the date of the imperfect patent record; (2) that no such patent has ever come into the possession of the applicant, and that he has never been advised of nor had any information concerning the issuance of one; (3) that he has made due and diligent inquiry in all places in which it might be supposed said patent would be found, if it ever existed, and like inquiry of all persons who might be supposed to have knowledge concerning such patent, naming and describing such persons together with their relation to the property, if any, in detail, without obtaining any information concerning it.

Upon receipt of such an application and evidence, if deemed satisfactory and all else be found regular, this office will cause a perfect patent to be issued. There is no charge for this, and the perfect patent will be delivered as requested by the applicant.

William Spry, *Commissioner.*

Approved September 2, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 32]

DELIVERY OF ERRONEOUSLY CANCELED PATENTS

[Instructions of February 28, 1881 (8 C. L. O. 10), Modified]

Department of the Interior,
Washington, February 2, 1927.

Finney, *First Assistant Secretary:*

This is an appeal by J. F. Rose from a decision of the Commissioner of the General Land Office dated December 4, 1926, denying his request for the issuance of a patent for that portion of the NW. 1/4 SW. 1/4 sec. 7, T. 49 N., R. 17 W., fifth principal meridian, Missouri, not in conflict with the patented claim of Antoine Gautier.

It appears that on November 12, 1833, the board of commissioners appointed pursuant to the act of July 9, 1832 (4 Stat. 565), for the purpose of passing on private land claims in the State of Missouri, decided that the claim of Antoine Gautier should be confirmed for 4,000 arpents, in accordance with his application dated November 29, 1796. The claim was surveyed in March, 1848, and the plat thereof approved December 12, 1848. It was designated as survey No. 3327, embraced land in Ts. 49 and 50 N., Rs. 17 and 18 W., fifth principal meridian, and was confirmed by the act of July 4, 1836, (5 Stat. 126). Patent issued September 3, 1860. According to the plat of survey, the claim of Gautier covers most of the NW. 1/4 and a part of the NW. 1/4 SW. 1/4 sec. 7, T. 49 N., R. 17 W., fifth principal meridian.

On September 1, 1837, William B. Gibson made cash entry No. 15891 at the Fayette office for NW. 1/4 and NW. 1/4 SW. 1/4 sec. 7, T. 49 N., R. 17 W., fifth principal meridian (215.10 acres), describing the tract in accordance with a plat of survey made in November, 1816. Patent issued to Gibson on November 10, 1841, but was not delivered. It was returned to the General Land Office on March 26, 1852, and pursuant to a letter addressed to the Boonville land office under date of November 8, 1879, the final certificate issued to Gibson was noted as canceled because of conflict with survey No. 3327, and across the face of the patent was indorsed the following:

> Canceled. Conflicts with survey No. 3327, private claim of Antoine Gautier. See letter "B," November 8, 1879. S. W. Clark, recorder, G. L. O.

A like notation was made on the record of the patent. In addition to the notation on the patent, it was mutilated by cutting the parchment across the signatures thereto and across the official seal.

In the decision appealed from the commissioner conceded that the attempt to cancel the entry and patent of Gibson was ineffective, citing Bicknell *v.* Comstock (113 U. S. 149), and that the present owner of any portion of the land covered by the Gibson entry and patent is entitled to delivery of the patent under the ruling of the Supreme Court of the United States in United States ex rel. McBride *v.* Schurz (102 U. S. 378). Although refusing to issue a new patent for that portion of the land now owned by Rose, the commissioner offered to surrender the patent for recordation after he had indorsed thereon a notation in accordance with the instructions of February 28, 1881 (8 C. L. O. 10).

The instructions referred to directed that in cases such as the court considered in United States ex rel. McBride *v.* Schurz, supra, the patent should be delivered after a notation thereon of the following, to be dated and signed by the commissioner:

> Delivered under Secretary's instructions of February 28, 1881, in accordance with the decision of the United States Supreme Court in McBride *v.* Schurz, October term, 1880.

The commissioner correctly denied the application for a new patent. Having no jurisdiction over the land, the Land Department could not assume to issue a patent therefor.

However, it is the opinion of this department that the notation provided for in the instructions of February 28, 1881, supra, is too brief and that a notation in substantially the following form should be attached to the patent, over the signature and seal of the Commissioner of the General Land Office:

> The notation of cancellation of the attached patent issued to William B. Gibson on November 10, 1841, and its mutilation, were without the consent of the grantee and erroneous, and under the decision of the Supreme Court of the United States in Bicknell *v.* Comstock (113 U. S. 149), do not affect the validity of the patent, which is delivered for recording on the county records pursuant to the decision of the Supreme Court of the United States in United States *v.* Schurz (102 U. S. 378).

A like notation should be attached to the record of the patent.

The case is remanded for action in accordance with the foregoing.

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MANNER OF PROCURING DELIVERY OF PATENTS FROM THE GENERAL LAND OFFICE OR FROM LOCAL UNITED STATES LAND OFFICES

Original patents on file in local United States land offices, or which have been returned to the General Land Office from various local offices upon their discontinuance may be procured, by the parties entitled to receive them, by any one of the following methods:

1. By surrendering the duplicate final receipt or duplicate certificate of entry.

2. By filing an affidavit showing inability to surrender such duplicate, and an abstract of title showing the present ownership of the land, or of a portion thereof, embraced in the patent. (In such cases, the abstract of title will be returned with the patent.)

3. By filing, on the form printed below, a certificate of the proper recording officer of the county in which the land is located, that there has been deposited with him the necessary fee to pay for the recordation of the desired patent; whereupon it will be transmitted directly to such officer, to be placed of record and thereafter delivered to the proper party.

---------------------------------------, 19----.
(Post-office address) (Date)

I hereby certify that there has been deposited with me by ---------------- ------------- the fee required by law for recording upon the official records of this county ------------------------------ patent No. ----------, for the

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of section ----------, township ----------, range ----------, and that upon receipt of said patent I will cause same to be duly placed of record.

[SEAL.] --------------------------

(Official title)

NOTE.—Cash, homestead, and warrant patents contain about 400 words; surveyor general patents contain about 800 words.

PRACTICE

[Reported, 29 L. D. 649]

REGISTERED LETTERS[1]

Department of the Interior,
General Land Office,
Washington, March 1, 1900.

Commissioner Hermann to surveyors general, registers and receivers, and special agents:

You will hereafter be governed, in the matter of registration of official letters, by the following rules:

1. The general correspondence of your office with this office or the public is not required to be registered, and such registration will not be paid for by the United States.

2. Official returns will not be registered.

3. Certificates of deposit on account of surveys will not be registered.

4. Notices of hearings in contest cases required by rule 14 of Practice to be mailed by registered letter, are to be sent by contestants, who must furnish proof thereof, and are not to be registered at the public expense.

5. Notices of hearings and decisions in cases where hearings are ordered on behalf of the Government, will be registered as a matter of evidence.

6. In addition to the registration of notices of hearings and decisions, as heretofore provided, it is directed that all notices required to be given by you of your decisions, or of decisions of this office, involving the right of appeal, or the exercise of other rights within a certain time, be served by you personally or by registered letter.

7. When personal service is had, you will transmit to this office the acknowledgment of such service or evidence thereof. When service is made by registered letter, the registry return receipt, or returned letter, as the case may be, must, in every instance, be sent up with the papers in the case, or otherwise accounted for.

8. Such costs of registration as are payable by the Government will be paid out of the advances from the proper appropriations, and estimates therefor will be embraced in the usual requisitions.

9. In accounts for contingent expenses, under the head of registration of letters, separate registration receipts from the postmaster will not be required, and in lieu thereof disbursing agents will prepare quarterly statements, in detail, showing the letters registered during

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[1] See Circular No. 449, p. 1098.

the quarter, which are to be signed by the postmaster and certified to by the disbursing agent.

10. In rendering accounts carry balances from quarter to quarter until the amount advanced is exhausted, when a new advance will be made for the ensuing quarter.

Approved.

E. A. Hitchcock, *Secretary.*

[Reported, 32 L. D. 132]

INSTRUCTIONS UNDER ACT OF JANUARY 31, 1903, RELATIVE TO THE COMPULSORY ATTENDANCE OF WITNESSES BEFORE REGISTERS AND RECEIVERS

Department of the Interior,
General Land Office,
Washington, D. C., March 20, 1903.[2]

Registers and Receivers, United States Land Offices.

Gentlemen: Your attention is directed to the provisions of the act of Congress approved January 31, 1903 (32 Stat. 790), entitled "An act providing for the compulsory attendance of witnesses before registers and receivers of the land office."

The act reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That registers and receivers of the land office, or either of them, in all matters requiring a hearing before them, are authorized and empowered to issue subpœnas directing the attendance of witnesses, which subpœnas may be served by any person by delivering a true copy thereof to such witness, and when served, witnesses shall be required to attend in obedience thereto: *Provided,* That if any subpœna be served under the provisions of this act by any person other than an officer authorized by the laws of the United States, or of the State or Territory in which the depositions are taken, the service thereof shall be proved by the affidavit of the person serving the same: *Provided further,* That said subpœnas shall be served within the county in which attendance is required, and at least five days before attendance is required.
>
> Sec. 2. That witnesses shall have the right to receive their fee for one day's attendance and mileage in advance. The fees and mileage of witnesses shall be the same as that provided by law in the district courts of the United States in the district in which such land offices are situated; and the witness shall be entitled to receive his fee for attendance in advance from day to day during the hearing.
>
> Sec. 3. That any person willfully neglecting or refusing obedience to such subpœna, or neglecting or refusing to appear and testify when subpœnaed, his fees having been paid if demanded, shall be deemed guilty of a misdemeanor, for which he shall be punished by indictment in the district court of the United States or in the district courts of the Territories exercising the jurisdiction of circuit or district courts of the United States. The punishment for such offense, upon conviction, shall be a fine of not more than two hundred dollars, or imprisonment not to exceed ninety days, or both, at the discretion of the court: *Provided,* That if such witness has been prevented from obeying such subpœna without fault upon his part he shall not be punished under the provisions of this act.
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> Sec. 4. That whenever the witness resides outside the county in which the hearing occurs any party to the proceeding may take the testimony of such

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[2] See Circulars of Mar. 22, 1911, p. 1083; May 9, 1913, p. 1093; Apr. 6, 1914 (No. 311), p. 1095; June 29, 1926 (No. 1075), p. 1112; Mar. 28, 1927 (No. 1117), p. 1128; and May 16, 1927 (No. 1123), p. 1129.

witness in the county of such witness's residence in the form of depositions by giving ten days' written notice of the time and place of taking such depositions to the opposite party or parties. The depositions may be taken before any United States commissioner, notary public, judge or clerk of a court of record. Subpœnas for witnesses before the officer taking depositions may issue from the office of the register or receiver, or may be issued by the officer taking the depositions, and disobedience thereof, as defined in this act, shall also be punished; and the witness shall receive the same fees and mileage and be subject to the same penalties in all respects as in case of violation of a subpœna to appear before the register or receiver, and subject to the same limitations. The fees of the officer taking the depositions shall be the same as those allowed in the State or Territorial courts, and shall be paid by the party taking the deposition, and an itemized account of the fees shall be made by the officer taking the depositions and attached to the depositions.

SEC. 5. That whenever the taking of any depositions taken in pursuance of the foregoing provisions of this act is concluded the opposite party may proceed at once at his own expense to take depositions in his own behalf, at the same time and place and before the same officer: *Provided*, That he shall, before taking of the depositions in the first instance is entered upon, give notice to the opposing party, or any agent or attorney representing him in the taking of said depositions, of his intention to do so.

The first section of the act authorizes and empowers the register and receiver, or either of them, to issue subpœnas directing the attendance of witnesses at hearings to be held before them; and requires such witnesses, when duly served as herein provided, in the county wherein the land office is situated, to attend in obedience to the summons.

Registers and receivers, or either of them, when requested in writing, by either party to a cause pending before them, will issue a subpœna for such witnesses as the applicant may desire to testify in his behalf at such hearing.

The subpœna may be in the following form:

THE UNITED STATES OF AMERICA.
To________________________________
You are hereby commanded to be and appear before____________________
at______________ office, in____________________, in the county of __________
State (or Territory) of __________________________, at the hour of __________
m. on the _______ day of ___________, 190__, to testify in behalf of _________
at a hearing, to be then and there held, wherein _____________________________
is ___________ and ___________ is ___________, and herein fail not at your peril.
Issued this _______ day of ______________, 190__.
____
____

The service of the subpœna and proof of the same as provided in said section will devolve upon the party in whose behalf the subpœna is issued, and the officer issuing the same shall deliver to such party the original and a copy of the same for each witness named therein. No fee is provided for the register and receiver for issuing such process.

Section 2 of the act fixes the fees and mileage of witnesses attending before registers and receivers at the same as that provided by law in the district courts of the United States for the district in which the land office is situated and gives to the witness the right to receive the fee for one day's attendance and mileage in advance, and also entitles him to receive his fee for attendance in advance from day to day during the hearing. Such payments must be made by the respective parties to the hearing in whose behalf the witness is subpœnaed, except in cases in which the United States is a party. In such cases the receiver will pay the fees and mileage of the witnesses on behalf of the Government, and it will be his duty to make requisition based upon an estimate furnished by the special agent for funds to pay all expenses chargeable to the United States in such hearings.

Section 3 fixes the punishment to which persons are liable who willfully neglect or refuse obedience to such subpœna, and provides the method of enforcing the same, which shall be by indictment in the district court of the United States or in the district courts of the Territories exercising the jurisdiction of circuit courts of the United States.

Section 4 authorizes any party to the proceedings to take the testimony of any witness, who resides outside of the county in which the hearing occurs, by deposition, which, upon ten days' previous notice, may be taken before any United States commissioner, notary public, judge or clerk of a court of record in the county where the witness resides. In such case the party desiring to take the deposition will be required to file with the register or receiver an affidavit setting forth the name and the address of the witness; that he resides outside the county in which the land office is situated, and that for such reason he desires to take the testimony of the witness named, in the form of a deposition. Whereupon it shall be the duty of the register or receiver, or either of them, to enter an order designating the time and place at which such deposition will be taken, and to issue a commission to some officer designated by this act to take the same. In such case either the register or receiver or the officer before whom the depostion is to be taken is authorized to issue subpœna for the witness, using substantially the form hereinbefore prescribed, and disobedience thereof as defined in the act is punishable as in case of violation of a subpœna to appear before the register or receiver. Witnesses attending before such officers are entitled to the same fees and mileage and payable in the same manner as if they appeared before the register and receiver at the district land office, and the fees of the officer taking such deposition will be the same as those allowed to such officers respectively for taking depositions to be used in the State or Territorial courts. Such fees are to be paid by the party taking the deposition, and the officer taking the same is required to attach thereto an itemized account of the fees charged and collected.

It will be the duty of the register and receiver to see that this requirement is observed.

Section 5 extends to the opposite party the right to take depositions before the same officer, at once upon the conclusion of the first depositions; and he is entitled to have his witnesses summoned in like manner and subject to the same conditions as his antagonist: *Provided*, That notice of the intention to take such testimony is given to the opposite party, his agent or attorney, "before taking of the depositions in the first instance is entered upon."

To aid in enforcing the punitive provisions of this act, in issuing a commission to take testimony you will instruct the commissioner to make special return to you of the name of any witness who, after service, has failed, under the provisions of section 3, to respond to the subpœna, and you will make prompt report to the United States district attorney of the proper district, of the names of such party or parties as well as of those who have been duly summoned have failed to appear before you, to the end that he may take such action in the premises as the law requires.

The object and purpose of this act is to afford to litigants the means of enforcing the attendance of witnesses when hearings are ordered. It is not exclusive in its operation to the extent of abolishing the existing methods, under the rules, by which the attendance of witnesses may be secured or their testimony taken by deposition; and parties may elect to use either method of procedure. But should they think proper to proceed under the existing rules of practice and fail to secure the attendance of their witnesses, they will not be entitled to a continuance as heretofore.

Very respectfully,

W. A. Richards, *Commissioner.*

Approved.

E. A. Hitchcock, *Secretary*

[Reported, 35 L. D. 681]

CASES CONSIDERED BY CHIEFS OF FIELD DIVISIONS

Department of the Interior,
General Land Office,
Washington, D. C., April 24, 1907.[3]

Registers and Receivers, United States Land Offices.

Sirs: The following instructions are issued for your guidance:

* * * * * * *

5. In all cases of application to make final proof, final entry, or to purchase public lands under any public land law, the register and receiver will at once forward a copy thereof to the chiefs of field divisions or special agents. Such copy will be indorsed "coal lands" or "not coal lands," as the case may be. Where the land is in a national forest or other reservation, a second copy will be forwarded to the officer in charge thereof.

6. Registers and receivers will not issue final certificate or its equivalent in any case until the copy of notice mentioned in paragraph 5 is returned with the chief of field division's indorsement thereon. The chief of field division will in every case return the copy of notice prior to date for final proof or purchase.

7. When the copy of notice is returned with an indorsement not protesting the validity of the entry, the register and receiver will act upon the merits of the proof as submitted. Where the returned indorsement of chief of field division or other officer protests the validity of the entry, the register and receiver will forward all papers to this office without action.

8. The chief of field division, on receipt of such copy of notice, will make a case thereof on his docket, and also make a field examination in the following cases:

(*a*) Cases wherein he has reason to believe a particular entry is fraudulent.

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[3] Amended by Circulars Nos. 90, p. 1088, and 276, p. 1095.

(*b*) Cases wherein the register and receiver have reason to believe a particular entry is fraudulent and have indorsed that fact upon the copy of the notice.

(*c*) Cases other than coal entries in lands classed as coal lands.

Chiefs of field division will exert every effort to make the field examination prior to date for final proof.

9. In cases not within paragraph 8 the chief of field division will return such copy of notice indorsed over his signature "no protest against validity of this entry." In cases under paragraph 8 he will return to the register and receiver the copy of notice indorsed "protest against the validity of this entry is filed in this office." If investigation is completed before date for final proof, he will so notify the register and receiver, by letter; and if investigation is unfavorable to entry, he will submit his report to this office.

The circulars of January 21, 1907, March 15, 1907, and all parts of the circular of December 7, 1905, in conflict herewith, and all other regulations and circulars in conflict herewith are hereby revoked.

Very respectfully,

R. A. Ballinger, *Commissioner.*

Approved April 24, 1907.

James Rudolph Garfield,
Secretary.

[Reported, 39 L. D. 150]

NOTING PROTESTS ON RECORDS IN DISTRICT LAND OFFICES

Department of the Interior,
General Land Office,
Washington, D. C., August 4, 1910.

Registers and Receivers, United States District Land Offices,
and Chiefs of Field Divisions, General Land Office.

Gentlemen: 1. It has been determined, to the end that the records of each and every district land office shall hereafter present a full and complete history of and concerning a claim to, or entry of, public lands, therein asserted, or made, including herein the origin, prosecution, and ultimate disposition of any and every kind of adverse proceedings against such claim, or entry, that the records of said offices shall disclose the initiation and conclusion of any and all contests and protests therein filed and presented. Pursuant to this conclusion, chiefs of field divisions are hereby directed, in any and all cases wherein they shall receive a complaint, or any information, impeaching the validity of any claim to a tract of public land, or any direction to proceed to an investigation relative to the validity, or invalidity, of any such claim, to communicate to the register and receiver, within whose territorial jurisdiction the involved land may be situate, a formal written protest against said claim, or entry, which protest may be substantially of the form following, to wit:

Register and Receiver, United States District Land Office.

Gentlemen: It has been represented to me that there is good and sufficient reason why the homestead entry of John Doe, serial No. (07542), embracing the NE. ¼ of sec. 12, T. 14 N., R. 7 W., B. H. M., should not be permitted to proceed to patent until the validity, or invalidity, thereof has been carefully investigated and determined, it being alleged that said entry has not been initiated, or maintained, in accordance with the law authorizing such entries. You are, therefore, hereby advised, that it is my purpose promptly to proceed to such an investigation; and I do now and hereby protest against the acceptance of any proof which may be submitted in support of said entry, or the issuance and delivery to said entryman of any evidence of right or title to the lands covered thereby, requesting that my said protest may be by you duly noted upon the records of your office, to the end that the same may become and be known to all persons who may in any wise be interested in said entry, and that, thereafter, it may by you be duly forwarded to the Commissioner of the General Land Office, at Washington, D. C., for his information in the premises.

Respectfully,

———— ————

Chief of Field Division.

2. Upon receipt of any such protest, the register will cause same to be duly noted in the serial number register, in like manner as other papers and documents pertaining to any public land entry, or claim, are required to be noted by paragraph 18 of the circular of June 10, 1908,[a] regulating the method of keeping records and accounts relative to the public lands, and, as well, at the proper place in the tract book in which such entry or claim is recorded.

3. In like manner, and for the same reason, when an affidavit or other written instrument is filed in a district land office by any person offering contest against any claim to a specified and described tract of public lands, or protesting against the allowance or perfection of the claim made under and by virtue of said entry, the register will make due and proper notation concerning the receipt and filing of said affidavit, or other writing, in accordance with the instructions contained in the foregoing paragraphs hereof.

Very respectfully,

S. V. Proudfit,
Acting Commissioner.

Approved August 4, 1910.

Frank Pierce,
Acting Secretary.

[Reported, 39 L. D. 601]

COMPULSORY ATTENDANCE OF WITNESSES—AMENDMENT OF CIRCULAR OF JUNE 27, 1904

Department of the Interior,
General Land Office,
Washington, March 22, 1911.

Registers and Receivers, Chiefs of Field Divisions, Special Agents, and Special Disbursing Agents.

Gentlemen: The circular of June 27, 1904 (33 L. D. 58), which amended the circular of instructions of March 30, 1903 (32 L. D. 132), regarding the provisions of the act of January 31, 1903 (32 Stat. 790), entitled "An act providing for the compulsory attendance of witnesses before registers and receivers of the land office," is hereby modified to read as follows:

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[a] The circular of June 10, 1908, has been superseded by Circular No. 616. See par. 35, p. 56.

The second section of the said act of January 31, 1903, provides in part that "the fees and mileage of witnesses shall be the same as that provided by law in the district courts of the United States in the district in which such land offices are situated."

The general law fixing the fees of witnesses for attendance upon United States courts to which reference must be had in determining the fees and mileage allowed under the act of January 31, 1903, is found in section 848, Revised Statutes, which is as follows:

> SEC. 848. For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpœnaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.
>
> When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of one dollar a day.

The act of May 27, 1908 (35 Stat. 377), provides a special rate of mileage and a special compensation for attendance in certain States and Territories. The provision of the act is as follows:

> Jurors and witnesses in the United States courts in the States of Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, Colorado, and Utah and in the Territories of New Mexico and Arizona shall be entitled to receive for actual attendance at any court or courts and for the time necessarily occupied in going to and returning from the same, three dollars a day, and fifteen cents for each mile necessarily traveled over any stage line, or by private conveyance, and five cents for each mile by any railway or steamship in going to and returning from said courts: *Provided*, That no constructive or double mileage fees shall be allowed by reason of any person being summoned as both a witness and juror, or as a witness in two or more cases pending in the same court and triable at the same term thereof.

The fourth section of the act of January 31, 1903, provides:

> That whenever the witness resides outside the county in which the hearing occurs any party to the proceeding may take the testimony of such witness in the county of such witness's residence in the form of depositions by giving ten days' written notice of the time and place of taking such depositions to the opposite party or parties.

1. No witness can be compelled to appear before the land office or any other officer outside the county in which the subpœna may be served, and no mileage fees should be demanded or paid except for distance necessarily traveled by the shortest usually traveled route between the land office and points in the same county, or, when depositions are taken, between points in the county of the witness's residence; nor should any attendance fee be allowed or paid a witness for time consumed in going to or returning from the place where the hearing is held or deposition taken, except in those States or Territories to which the act of May 27, 1908, supra, applies.

2. Where the same person appears as a witness in more than one case at the same time, between the same parties, you should tax the mileage fees to be received by him as costs in the first case in which action is taken, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of. In the event that a witness testifies in more than one case between the same parties on the same day, he is entitled to but one per diem fee

3. Under the provisions of section 848 of the Revised Statutes and the act of May 27, 1908, a witness is entitled to receive the amount allowed by these statutes for each day's attendance before the officer taking the testimony, in each case in which he may have been in attendance pursuant to law, regardless of the fact that he may have been in attendance as a witness in more than one case before the same officer at the same time. This is a general rule applicable to all cases and to all parties. Each witness who attends a hearing before a United States land office is entitled to receive the mileage provided by law for the distance actually and necessarily traveled within the county in which such land office is located. Each witness whose deposition is taken under section 4 of the act of January 31, 1903, supra, is entitled to mileage for the distance actually and necessarily traveled within the county of his residence. In cases where a witness is required to be in attendance in more than one case before the same officer at the same time or on successive days, one subpœna only should be issued, and the cases in which his presence is desired should be particularly designated therein.

4. Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy, or at the request of the attorney or duly authorized agent of such party, without having been subpœnaed to so attend, should receive the same mileage and attendance fees to which he would have been entitled if he had been first duly subpœnaed as a witness on behalf of such party.

Care should be taken that payments to clerks and other officers of the United States for necessary expenses in going, returning, and attendance at the hearing are made under the provisions of section 850 of the United States Revised Statutes.

The register and receiver alone are authorized by this office to employ a stenographer where one becomes necessary to reduce the testimony to writing. Where a commission is issued to an officer to take depositions it is his duty to provide for the necessary clerical services to comply with such commission, at his own expense, and he is entitled to the fees allowed by law for taking depositions.

The voucher of the officer taking a deposition must cite the statute under which he claims fees for his services.

Very respectfully,

Fred Dennett, *Commissioner.*

Approved.

Frank Pierce, *Acting Secretary.*

Circular No. 11

NOTICE TO BE ATTACHED TO SUBPŒNAS

Department of the Interior,
General Land Office,
Washington, D. C., April 21, 1911.

Chiefs of Field Divisions and Special Agents.

Sirs: From and after receipt hereof, you will please see that there is furnished to each witness with the copy of the subpœna delivered to him a copy of the following statement:

NOTICE TO BE ATTACHED TO COPY OF EACH SUBPŒNA SERVED

A witness can not be compelled under the subpœna, copy of which is attached, to appear outside of his own county, and if he does so appear, can claim mileage in but one county; the county where the local land office is located if he appears before that office, and the county of his residence if he appears before another officer. Any witness who is served with a subpœna directing him to appear at a place outside of his own county will please notify ------------------, Chief of Field Division, ------------------.

Very respectfully,

FRED DENNETT, *Commissioner.*

[Reported, 40 L. D. 230]

CIRCULAR No. 48

PREPARATION OF TRANSCRIPTS OF TESTIMONY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 19, 1911.

Registers and Receivers, United States Land Offices.

GENTLEMEN: To avoid the transmission here of incomplete records in contest cases, you will prepare, or cause to be prepared, the transcripts of testimony in litigated matters to show—

1. The names of the parties, dates and place of hearing, and name of the officer taking the testimony.
2. The appearance made by either party, whether general or special, and, if represented by an attorney or agent, the post-office address of such representative.
3. The names of the various witnesses called and sworn, by whom called, and the name of the attorney or person conducting the examination both in chief and otherwise.
4. If any motions or objections are made they should be fully transcribed, giving the name of the party making the same; and the ruling thereon, if any, should be carefully noted.
5. When either party rests his case, such fact should be noted. Any adjournments in the taking of testimony should also be noted.
6. A complete index should accompany each record.

The contest clerk should be carefully instructed in order that records may show just what proceedings were had at the hearing.

Very respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 64

NOTICE OF DEPARTMENTAL DECISIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE
Washington, November 25, 1911.

Registers and Receivers, United States Land Offices.

SIRS: I am sending herewith copies of amended rules 82 and 83 of the Rules of Practice, and of departmental order of November 16, 1911, with directions that one of each of these copies be posted in a conspicuous place in your offices for the period of 60 days.

Notices of all departmental decisions rendered after December 15, 1911, on appeals from this office, will be given direct to the interested parties and attorneys by mail through the Office of the Assistant Attorney General for the Interior Department, and not through this office and your offices as heretofore. This will make it necessary that the post-office addresses to which these notices are to be sent should be shown by the records of the cases before the department, and in many cases they are not now so shown. You are therefore urgently instructed to at once, upon the receipt of this letter, report direct to the Secretary and not through this office the names and present post-office addresses of all persons who are interested either as parties or attorneys in any case now pending before the department on appeal, and also to make a similar report to this office in all cases pending here on appeals from your decisions where appeals have not been taken to the department. A separate report giving the style of the cause and the number of the entry involved should be made in each individual case, and where you do not know the present addresses, either officially or personally, and can not ascertain them from your records or otherwise, you will report such addresses as "unknown."

Hereafter you will be particularly careful to state the name and address of each person who is interested either as a party or an attorney in any appealed case in all letters transmitting appeals from your decisions, and appeals to the department which are transmitted to this office by you; and as soon thereafter as any change in such addresses comes to your knowledge you will at once report such change to the department in cases pending there or to this office in cases pending here.

All motions for rehearing of departmental decisions must be sent to or filed in the department by the persons making such motions, and they will not be received and forwarded to the department by either this office or your offices.

Very respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR NO. 86 [b]

REVOKING "INSTRUCTIONS IN MATTER OF INVESTIGATIONS OF STATE AND RAILROAD SELECTIONS AS TO MINERAL CHARACTER"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 5, 1912.

Registers and receivers, United States Land Offices, and Chiefs of Field Divisions.

SIRS: The circular of instructions addressed to you dated July 28, 1911, entitled "Instructions in Matter of Investigations of State and Railroad Selections as to Mineral Character," is hereby revoked, effective April 1, 1912, and it will not be necessary after that date for registers and receivers to advise the proper chief of field division of the acceptance of any such selections or to furnish him with any of the data relating thereto as is required under said circular.

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[b] Circular No. 86 was revoked by Circular No. 287, dated Dec. 27, 1913, and Circular No. 287 was revoked by Circular No. 339, dated July 30, 1914. Circulars Nos. 287 and 339 are not carried in this publication.

Instructions as to the investigation of these selections will be issued from this office to proper chief of field division in each case listed for investigation.

Respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 90[4]

INDORSEMENTS BY CHIEFS OF FIELD DIVISIONS UPON NOTICES OF INTENTION TO SUBMIT PROOF

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 21, 1912.

Registers and Receivers and Chiefs of Field Divisions.

SIRS: Effective April 15, 1912, chiefs of field divisions will discontinue the use of the stamps now employed by them to indicate upon the duplicate notice of intention to submit proof on an entry that there is a protest against the entry or that there is no protest against it, as the case may be. In lieu of the "protest" stamp, the following indorsement will be stamped upon the notice:

> Please withhold FINAL CERTIFICATE until field investigation has been made and report submitted.
>
> ----------------------------
> *Chief of Field Division.*
>
> ---------------
> (Date)

and in place of the "no protest" stamp this indorsement will be made:

> No information now in this office warranting field investigation.
>
> ----------------------------
> *Chief of Field Division.*
>
> ---------------
> (Date)

Accordingly, wherever, in circulars heretofore issued, registers and receivers are instructed to take certain action or to withhold action upon the receipt of a "protest" or of a "no protest" from the chiefs of field divisions, they will take like action or withhold action, as the case may be, when indorsements are made in the form herein indicated.

Whenever the indorsement "Please withhold final certificate, etc.," is for the sole purpose of making an investigation as to the coal character of the lands involved, the chiefs of field divisions will, in addition to that indorsement, stamp upon the top line of said indorsement "COAL ONLY," so that in such cases, the indorsement will be:

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[4] See Circular No. 213, p. 1090.

COAL ONLY

Please withhold FINAL CERTIFICATE until field investigation has been made and report submitted.

____
(Date)

_____________________________,
Chief of Field Division.

When indorsements in this last form are received, registers and receivers will, in case an election to receive patent is filed under the provisions of the act of March 3, 1909 (35 Stat. 844), issue final certificate, if the entry is in all other respects regular and there is no other reason for withholding certificate. When certificate is issued as herein authorized, the register and receiver will promptly advise the chief of field division of the filing of the election and the issuance of certificate, unless the election was transmitted by the chief of field division, in which case notice will be unnecessary.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved March 21, 1912.

SAMUEL ADAMS,
First Assistant Secretary.

CIRCULAR No. 148

WITHDRAWALS DURING PENDENCY OF CONTESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 26, 1912.

Registers and Receivers, United States Land Offices:

GENTLEMEN: By order of the department, immediately upon receipt of notice of an executive withdrawal that embraces lands included in contests, you are instructed to give all contestants notice of such withdrawal, in order that each contestant may determine whether it is to his advantage to further prosecute the contest.

Very respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 210

APPLICATIONS BY SETTLERS TO MAKE NONMINERAL ENTRIES OF WITHDRAWN LANDS UNDER THE PROVISIONS OF SECTION 2 OF THE ACT OF JUNE 25, 1910

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 28, 1913.

Registers and Receivers, United States Land Offices.

GENTLEMEN: Your attention is called to the instructions of the Secretary, dated March 6, 1911, under the act of June 25, 1910 (36

Stat. 847), published in 39 L. D. 544. Said instructions state, referring to section 2 of the act:

> This section contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law. Applications to make nonmineral entries by settlers claiming the benefits of the above-mentioned provisions of section 2, will be referred to the chief of the appropriate field division for investigation and report before final action is taken thereon.

It has been noted that in a number of instances applications to make nonmineral entries of withdrawn lands by settlers claiming the benefits of the provisions of said section 2 of the act have been allowed by local land officers without reference to the chief of field division and in the absence of the investigation and report required by the above-quoted instructions, and that, in other instances, such applications have been rejected by the local land officers.

When such an application is filed in your office, same should be suspended and transmitted by you to this office and the case called to the attention of the chief of field division in order that appropriate investigation may be made and report submitted to this office, where the question of the allowance or rejection of the application will be determined.

Respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 213

IN RE NOTICE TO CLAIMANTS THAT ACTION IS WITHHELD PENDING INVESTIGATION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 11, 1913.

Registers and Receivers, United States Land Offices.

GENTLEMEN: It is noted that in cases where certificates are withheld on request of chiefs of field divisions pending investigation, many of the local officers notify claimants on Form 4–362 that proof has been "suspended" because "protested" by the Chief of Field Division.

Such notice is misleading and in many cases interpreted by claimants to mean that the chief has filed charges against their entries and that action is being taken of which they have not received notice to which they are entitled. Entrymen who have made sufficient compliance with the law are often unnecessarily alarmed and write this office requesting information as to the nature of the charges preferred by the chief.

The use of the "protest" and "nonprotest" stamps by chiefs of field divisions was discontinued (Circular No. 90) April 15, 1912, and in lieu of the "protest" stamp, the following indorsement is used:

> Please withhold final certificate until field investigation has been made and report submitted.

In order that claimants may be advised as to the real status of such cases a new blank has been prepared, Form No. 4–190, a supply of which will be furnished you at once. You will hereafter use this blank and no other in notifying claimants that certificate has been withheld pending field investigation.

Respectfully,

FRED DENNETT, *Commissioner.*

Approved March 11, 1912.

LEWIS C. LAYLIN,
Assistant Secretary.

[Reported, 42 L. D. 71]

CIRCULAR NO. 225

CONTEST—CONTESTANT—RELINQUISHMENT—PREFERENCE RIGHT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 1, 1913.

Registers and Receivers, United States Land Offices.

GENTLEMEN: In accordance with the decision of the department in the case of Smith *v.* Woodford (41 L. D. 606), the instructions approved September 15, 1910 (39 L. D. 217), have been amended to read as set forth below. You will apply the revised regulations in all pending unadjudicated and future contests.

1. In order to entitle a contestant to the preference right of entry conferred by section 2 of the act of May 14, 1880 (21 Stat. 140), it must appear not only that he has contested the entry and paid the land-office fees in that behalf but that he has actually procured the cancellation of the entry.

2. Where it appears of record that the defendant has been served with notice of contest personally or by publication, it will be conclusively presumed as a matter of law and fact that the relinquishment was the result of the contest, and the contestant will be awarded the preference right of entry without necessity for a hearing.

3. Where a good and sufficient affidavit of contest has been filed against an entry and no notice of contest has issued on such affidavit, or, if issued, there is no evidence of service of such notice upon the contestee, if the entry should be relinquished you will, as heretofore, immediately note the cancellation of the entry upon the records of your office. In such cases for purposes of administration a presumption will obtain that the contest induced the relinquishment and you will at once so notify the contestant and that he will be allowed to make entry accordingly. If the relinquishments is accompanied by the application of another than the contestant, you will at once advise the applicant of the pending contest and of the presumptive preference right thereunder, and that should the contestant in the exercise of such right make timely application for the land, showing himself duly qualified, said right can only be avoided on a showing that the contest charge was not true, or that the contestant is not a qualified

applicant, or that the land is not subject to his application. Should the contestant apply for the lands, showing himself duly qualified, within the preference-right period, and the intervening applicant file request for a hearing, with his corroborated affidavit as to the facts above stated in avoidance of a preference right in the contestant, within 20 days after the filing of the contestant's application, hearing will be had, after at least 30 days' notice to all interested parties, upon the issues thus presented, the intervening applicant having the burden of proof. The contestant must pay all costs of the testimony as to the truth or falsity of the contest charge, and upon any other issue each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses.

Should the local officers inadvertently allow an application filed with a relinquishment of a contested entry, they will, upon discovery of the error, immediately notify the contestant of his presumptive preference right and proceed in all other respects as above provided. Should a hearing be had, the intervening entryman may submit testimony with reference to his compliance with law prior to discovery of the erroneous allowance of the entry, as well as in support of the showing above provided for.

Nothing contained in the foregoing rule will preclude the exercise by the department of its authority to adjudicate cases as they may arise in accordance with the particular facts thereof and in the light of the settled principles of equity.

4. Where, prior to hearing in a contest, a junior contest is filed, alleging a valid ground for the cancellation of the entry, and in addition thereto the collusive nature of the prior contest, the junior contestant may, if the entryman has been served with notice of the prior contest, intervene at the hearing and submit testimony in support of his charges.

Should the junior contestant elect to offer testimony in support of his charge of collusion only, he will not gain a preference right of entry if such charge be established. If, at the time of the filing of the junior contest, notice is not issued on the prior contest, you will issue such notice and at the same time notice on the junior contest; the latter notice must recite all the charges contained in the affidavit and state, in addition, that the junior contestant will be allowed to appear at the time set for taking testimony in the prior contest and offer evidence in support of his charges. The junior contestant will be required to serve notice on both the prior contestant and the entryman.

5. If, before the case proceeds to a hearing, the entryman's relinquishment be filed, both contestants must be notified of the cancellation of the entry and of their right to apply to enter the land within 30 days after the receipt of such notice. Should both apply within such period, you will set a day for hearing, of which each shall have at least 30 days' notice, at which the junior contestant will be allowed to prove his charge of collusion and so defeat the claimed preference right of the prior contestant.

6. Where a junior contest charging collusion is not filed until after the prior contest has proceeded to a hearing, it will be suspended pending the closing of the latter case, and must wholly fail if the

entry be canceled as the result of the prior contest. This, however, will not prevent the junior contestant from attacking the application of the successful contestant to make entry, upon the ground of collusion or for any other valid cause, should the latter attempt to exercise the preferred right of entry, nor, should the prior contest result in favor of the entryman, will the junior contestant be precluded from prosecuting his case if his affidavit, in addition to the charge of collusion, states a sufficient ground for the cancellation of the entry other than the charge involved in the trial of the prior contest.

Respectfully,

Fred Dennett, *Commissioner.*

Approved.

Lewis C. Laylin,
Assistant Secretary.

[Reported, 42 L. D. 160]

PRACTICE—EVIDENCE—DEPOSITIONS[6]

Department of the Interior,
General Land Office,
Washington, May 9, 1913.

Chiefs of Field Divisions.

Sirs: It is noticed that it is the general practice upon the part of chiefs of field divisions whenever the testimony of any witness is desired in hearing cases whose evidence must be secured by means of deposition, to have commissions issued for the taking of this testimony on oral deposition rather than by interrogatories.

It is well appreciated that in many cases the testimony of a witness can properly be presented only by the taking of oral depositions, as, for instance, where the case is involved or the testimony of the witness is of a technical character.

However, it is the opinion of this office that in cases where the testimony of a witness may be readily adduced by formal interrogatories, this method should be adopted. There are several reasons which may be urged in support thereof. First, the agent in charge of the case is most familiar with the facts which should be developed by the testimony given under deposition and he, therefore, can best formulate the questions to be propounded. Secondly, the use of interrogatories obviates the necessity for the attendance before the officer taking the same of a representative of the Government who may have little familiarity with the details of the case, and also saves the expense incident to his attendance. Thirdly, the taking of depositions on interrogatories affords an opportunity to the defendant to submit cross-interrogatories to be propounded to the witness and does not necessitate the employing of counsel to appear before the officer taking the deposition. In many cases the defendants are precluded because of the expense involved from being represented when the deposition is taken orally. It is the desire of this office to make it easy for defendants in Government contest cases to present their side of the case, and the taking of testimony on interrogatories will assist to that end.

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[6] See Circular No. 311, p. 1095.

You are accordingly directed to make out the interrogatories whenever the testimony can just as well be taken in that way as otherwise. It must not be understood that this direction applies to the taking of a large number of depositions in one case at the same time and place, but it is more particularly directed to those cases where the deposition is of an isolated witness. The prime purpose is to prevent any undue or unnecessary hardship upon the public land claimant.

The determination as to whether or not the deposition shall be taken orally or upon interrogatories is left to your discretion, but in arriving at your decision you should be controlled by the suggestions and directions which are set forth herein.

Respectfully,

FRED DENNETT, *Commissioner.*

Approved May 9, 1913.

LEWIS C. LAYLIN,
Assistant Secretary.

[Reported, 42 L. D. 470]

CIRCULAR No. 274

POSTING OF CONTEST NOTICES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 25, 1913.

Registers and Receivers, United States Land Offices.

SIRS: Some misunderstanding exists as to whether copies of contest notices for posting shall include the dates of publication where service of the notice by publication is authorized.

Under rule of practice 9 it is provided that a statement of the dates of publication must be published with the notice, while the last paragraph of rule 10 requires that a copy of the notice as published, which necessarily includes the dates of publication, as well as the other matters required, shall be posted in the office of the register and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of the notice.

It is the practice in some districts to post, both on the land and in the office of the register, carbon copies of the notice as issued for publication, which of course do not contain the dates of publication.

Contestants should be warned of the necessity of posting copies of the notice as published, and that it is necessary that the register be furnished with a copy of the notice as soon as published. Upon receipt of such copy, the register will immediately post the same, noting the date, and afterwards make the required certificate of posting.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

A. A. JONES,
First Assistant Secretary.

[Reported, 42 L. D. 474]

CIRCULAR NO. 276 [c]

RULE 7, CIRCULAR OF APRIL 24, 1907 (35 L. D. 681-2), AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 30, 1913.

Registers and Receivers, United States Land Offices.

SIRS: Rule 7 of the circular of April 24, 1907 (35 L. D. 681-2), is hereby amended so as to read:

> When copy of notice is returned with indorsement not protesting the validity of the entry, the register and receiver will act upon the merits of the proof as submitted.
>
> Where returned notice by chief of field division or other officer protests the validity of the entry, the register and receiver will forward all papers to this office without action, except in cases of mineral applications for patent. In mineral applications for patent the proof should be considered upon its merits and, if found regular, certificate issued, although a protest may have been filed, but the claimant should be advised in such a case that patent will be withheld by the General Land Office pending a report by the chief of field division upon the bona fides of the claim.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved October 30, 1913.

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR NO. 311

REQUIRING NOTICES, MOTIONS, AND COMMISSIONS FOR TAKING ORAL DEPOSITIONS TO CONTAIN NAMES AND POST-OFFICE ADDRESSES OF ALL WITNESSES WHOSE TESTIMONY IS DESIRED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 6, 1914.

Registers and Receivers and Chiefs of Field Divisions.

SIRS: On March 12, 1914, in remanding for further hearing the case of ex parte Albert Clark et al., Waterville, Washington, 04706, the department made the following rulings in reference to the taking of oral depositions under the act of January 31, 1903 (32 Stat. 790);

> Said act under which these depositions were taken does not limit such depositions to written interrogatories, but it is in the discretion of the Land Department and of the Chief of Field Division acting therefor to take depositions orally, although no instructions to that effect appear to have been issued prior to May 9, 1913 (42 L. D. 160).
>
> The address of the witness, Buckley, for the taking of whose deposition commission issued and notice was served, was not properly given. Stating his address as Lincoln County merely did not afford the opposite party sufficiently specific information. His address or residence within the county should have been given.
>
> The other witness, Rundle, whose deposition was also taken, was not named at all, as stated, either in the commission or in the notice. His name and par-

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[c] See Circular No. 1148, p. 154.

ticular address should have been given in said notice and in the commission, and the taking of his deposition without these jurisdictional preliminaries was unauthorized.

The future supplies of blank forms will be changed to conform to the above rulings of the department. In the meantime you will see that all notices, motions, and commissions for taking oral depositions under said act contain the names and post-office addresses within the county of all the witnesses whose testimony is desired, and in all cases where the taking of such depositions is now pending and in which the notices, motions, or commissions are defective under the above rulings you will promptly take proper steps to correct such defects.

Very respectfully,

JOHN MCPHAUL,
Acting Assistant Commissioner.

[Reported, 43 L. D. 378]

CIRCULAR NO. 352

APPLICATIONS TO ENTER—EXECUTION—FILING

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 8, 1914.[6]

Registers and Receivers, United States Land Offices.

SIRS: On and after October 1, 1914, as directed in a recent departmental decision (Race *v.* Larson, 43 L. D. 313), you will reject all applications to make entry which are executed more than 10 days prior to filing.

Such rejections should be subject to the usual right of appeal; also subject to the right to file a new and properly executed application, or to reexecute the rejected application, prior to the intervention of any valid adverse claim.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved September 8, 1914.

ANDRIEUS A. JONES,
First Assistant Secretary.

[Reported, 43 L. D. 467]

CIRCULAR NO. 352 NOT APPLICABLE TO ALASKA

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 9, 1914.

Registers and Receivers, Fairbanks, Juneau, and Nome, Alaska.

SIRS: Circular No. 352 directed registers and receivers to reject all applications to make entry which are executed more than 10 days prior to filing.

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[6] Amended by circulars of Dec. 9, 1914, p. 1096, and Jan. 15, 1918 (No. 583), p. 1102.

Until such time as the transportation facilities in Alaska are improved the provisions of said circular will not be held applicable to applications filed in your offices.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

A. A. JONES,
First Assistant Secretary.

CIRCULAR No. 397[7]

DESCRIPTIONS ACCORDING TO PLAT OF SURVEY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 2, 1915.

Registers and Receivers, United States Land Offices.

SIRS: Because of the fact that descriptions of land in patents must follow the register's certificate of entry or location, care should be exercised by registers to describe the land according to the plat of survey. If a section is fractional or irregular, the tract should be described only according to the plat, and no mention made of what the description would be if the section were not fractional or irregular.

Before issuing a final certificate, a certificate of allowance of entry, or a notice for publication the description should be verified from the plat.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 44 L. D. 364]

CIRCULAR No. 436

SERVICE OF NOTICE ON UNKNOWN HEIRS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 4, 1915.

Registers and Receivers, United States Land Offices.

SIRS: The Postal Laws and Regulations provide that mail indefinitely addressed shall be denied admission to the registered mail. Accordingly, when notice is to be served by you on the unknown heirs of a public-land claimant, the same should be addressed to the claimant at his address of record and also at the post office nearest the land. Notice thus addressed will be held to constitute notice to the unknown heirs, provided the letter, if undelivered, is held at the office of delivery for at least 30 days.

All prior regulations in conflict herewith are hereby revoked.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

BO SWEENEY, *Assistant Secretary.*

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[7] See circular of Sept. 19, 1923, p. 1108.

CIRCULAR No. 449

REGISTRATION OF NOTICES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 11, 1915.

Registers and Receivers, United States Land Offices.

SIRS: It appears that recently in numerous instances letters from local offices have been unnecessarily registered. Your attention is directed to the provisions of Circular No. 20 [d] which directed that no registration fee will be paid by the United States unless the letter contains one of the following:

1. Notice of hearing.
2. Notice of decision, whether of your or this office, or of the department, to the party adversely affected only, where the decision is an adjudication of the case and the party has the right of appeal therefrom.
3. Notice of preference right or of other right to be exercised within a certain time, and of requirements of this office and the department.

Said Circular No. 20 also provided:

> Notice of the closing of cases, interlocutory decisions upon motions, orders of suspension, and all requirements made by your office of claimants that do not constitute a final disposition of the case, coupled with the right of appeal, must not be registered, and all instructions or circulars heretofore issued to the contrary are hereby revoked.
>
> It is believed that in many cases personal service may be made upon claimants or their counsel, and it is expected that, in every instance where possible, you will adopt this preferable method of service.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 44 L. D. 572]

CIRCULAR No. 460

MANNER OF PROCEEDING IN CONTESTS INITIATED UPON A REPORT BY A REPRESENTATIVE OF THE GENERAL LAND OFFICE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 26, 1916.

To Special Agents and Registers and Receivers, United States Land Offices:

The following rules are prescribed for proceedings in contests initiated upon a report by a representative of the General Land Office. All existing instructions in conflict herewith are superseded:

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[d] The instructions contained in Circular No. 20 are substantially restated in Circular No. 449. Circular No. 20 is not carried in this publication.

1. The purpose hereof is to secure speedy action upon claims to the public lands, and to allow claimant, entryman, or other claimant of record, opportunity to file a denial of the charges against the entry or claim, and to be heard thereon if he so desires.

2. Upon receipt of a report this office will consider the same and determine therefrom whether the facts stated, if true, would warrant the rejection or cancellation of the entry or claim.

3. Should the charges, if not disputed, justify the rejection or cancellation of the entry or claim the local officers will be duly notified thereof and directed to issue notice of such charges in the manner and form hereinafter provided for, which notice must be served upon the entryman and other parties in interest shown to be entitled to notice.

4. The notice must be written or printed and must refer to the letter from this office by initial and date, as authority for issuing the notice, and must state fully the charges as contained in said letter; also the number of the entry or claim, subdivision of land involved, name of entryman or claimant or other known parties in interest.

5. The notice must also state that the charges will be accepted as true (*a*) unless the entryman or claimant files in the local office within 30 days from receipt of notice a written denial under oath, of said charges, with an application for a hearing, (*b*) or submits a statement of facts rendering the charges immaterial, (*c*) or if he fails to appear at any hearing that may be ordered in the case.

6. Notice of the charges may in all cases be served personally upon the proper party by any officer or person or by registered letter mailed to the last address of the party to be notified, as shown by the record, and to the post office nearest to the land. When it is necessary to serve notice on the unknown heirs of a person in interest, the same must be addressed to that person at his address of record and also at the post office nearest the land. Proof of personal service shall be the written acknowledgment of the person served or the affidavit of the person who served the notice, attached thereto, stating the time, place, and manner of service. Proof of service of notice by registered letter shall consist of the report of the register and receiver who mailed the notices, accompanied by the post-office registry return receipts, or the returned unclaimed registered letters.

7. If a hearing is asked for, the local officers will consider same and confer with the chief of field division relative thereto and fix a date for the hearing, due notice of which must be given entryman or claimant. The above notice may be served by registered mail. By ordinary mail, a like notice will be sent to the chief of field division.

8. The chief of field division will duly submit, upon the form provided therefor, to this office, an estimate of the probable expense required on behalf of the Government. He will also cause to be served subpœnas upon the Government witnesses and take such other steps as are necessary to prepare the case for prosecution.

9. The Government must appear with its witnesses on the date and at the place fixed for said hearing, unless there is reason to believe that no appearance on behalf of the Government, will be required. The officer in charge of hearings must, therefore, keep advised, as far as possible, as to whether the defendant intends to appear at

the hearing. The chief of field division may, when present, conduct the hearing on behalf of the Government.

10. If the entryman or claimant fails to deny the charges under oath and apply for a hearing, or to submit a statement of facts rendering the charges immaterial, or fails to appear at the hearing ordered without showing good cause therefor, such failure will be taken as an admission of the truth of the charges and will obviate the necessity for the Government submitting evidence in support thereof, and the register and receiver will forthwith forward the case with recommendation thereon to the General Land Office and notify the parties by registered mail of the action taken. In cases finally closed upon default of claimant, if application to reopen any case is filed with the register and receiver, they will forthwith forward same with recommendations to the General Land Office.

11. Upon the day set for the hearing and the day to which it may be continued the testimony of the witnesses for either party may be submitted, and both parties, if present, may examine and cross-examine the witnesses, under the rules, the Government to assume the burden of proving the charges, unless otherwise ordered.

12. If a hearing is had, as provided in paragraph 11, the local officers will render their decision upon the record, giving due notice thereof in the usual manner. When decision is adverse to the Government, notice thereof must be sent to the chief of field division.

13. Appeals or briefs, if filed, must be in accordance with the rules but need not be served upon the chief of field division or Government representative in charge of the hearing.

14. The above proceedings will be governed by the rules of practice. All notices served on claimants or entrymen must likewise be served upon transferees or mortgagees.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones,
First Assistant Secretary.

[Reported, 45 L. D. 486]

Circular No. 505

MAKING AND PERFECTING OF ENTRIES FOR LAND IN MORE THAN ONE DISTRICT

Department of the Interior,
General Land Office,
Washington, D. C., September 22, 1916.

Registers and Receivers, United States Land Offices.

Sirs: Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by the following rules:

1. Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land

district, besides any other payment required by law. Each application should contain a proper reference to the other application.

2. In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. The notice must be posted in each office, a copy thereof being forwarded to the other office by the office issuing the notice. If the notice is published and posted correctly and the proof is satisfactory, the register who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the officers of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in their district, issue final certificate for that portion without further proof.

3. Should a proof be rejected by the office from which the notice of intention is issued, the other office should be so advised, but the appeal or further showing must be filed in the office which rejected the proof.

4. When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify such officers by letter of the date when the annual proof is filed.

5. In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, the proceedings in each office shall be conducted in all respects in conformity with law. A full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Notice of application for patent should be posted in each office and remain posted for the period required by law. However, only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the affidavits as to posting plat and notice on the claim to be sworn to within the respective land districts, as well, also, as all of the other affidavits required in mineral patent proceedings, except such as, under the law, may be sworn to outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land and posting in office will be further governed by the provisions of rule 2 hereof.

6. Rules 1 and 2 hereof are applicable to timber and stone entries, except that on such entries no commissions are collected.

7. Applications for public offerings under section 2455, Revised Statutes, can not be considered unless all the land lies in one land district.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

Circular No. 565

INSTRUCTIONS REGARDING CASES WHERE FIELD EMPLOYEES ARE SUBPŒNAED IN PRIVATE CONTEST CASES

Department of the Interior,
General Land Office,
Washington, August 31, 1917.

Registers and Receivers, United States Land Offices.

Sirs: My attention has been called to the fact that recently in a number of instances subpœnas have been issued for the attendance as a witness of a special agent of this office before the register and receiver in a private contest case. For your guidance in cases which may arise in the future you are advised that while a special agent may be subpœnaed on behalf of a private contestant the same as any other person, yet in such cases where the matter at issue involves public lands and the testimony sought to be procured has been secured by the special agent in the course of his official duties, the agent is instructed that when placed upon the witness stand he is to claim his privilege on the ground that the testimony sought refers to matters which are confidential and against the interest of the Government to disclose, and to request to be excused from testifying. Where it sufficiently appears that the testimony sought is of the character above described the claim of privilege should be allowed. As there are very few cases in which the agent will have information obtained otherwise, it is clear that as a general proposition the procuring of his attendance will be a useless expense to the party who requests that he be subpœnaed.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 46 L. D. 278]

Circular No. 583

APPLICATIONS FILED MORE THAN 10 DAYS AFTER THEIR EXECUTION—CIRCULAR 352 AMENDED

Department of the Interior,
General Land Office,
Washington, D. C., January 15, 1918.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is invited to an order of the Secretary of the Interior, dated January 9, 1918, modifying the regulations which require applications for entry to be filed within 10 days after their execution:

> The department is advised that various local officers have been obliged to reject applications to enter which were promptly mailed but were not received within the time fixed by the regulations of September 8, 1914 (43 L. D. 378), resulting in annoyance and expense to the applicants.

In view thereof you will direct local officers to accept as filed within the time named in said circular all applications to enter which were deposited in the mails within 10 days from the date of execution, the regulations being amended to agree herewith.

Very respectfully,

C. M. Bruce,
Acting Commissioner.

Circular No. 695

RELATIVE TO FEES FOR EXPERT TESTIMONY BY FORMER MINERAL EXAMINERS

Department of the Interior,
General Land Office,
Washington, May 19, 1920.

Chiefs of Field Divisions and Hearings Officers.

My Dear Sirs: In several instances lately former mineral examiners of this office, who have been requested to give evidence of facts ascertained by them in the course of official investigations made while in the employ of this service, have charged so-called " expert " fees for the time spent in giving the testimony. In the cases that have occurred heretofore we have approved the voucher largely because no particular contrary arrangement was made in advance.

We have given this matter careful consideration, and have come quite definitely to the conclusion that these charges are unjust and bad practice. As a rule these mineral examiners have secured excellent positions in private employment very largely as the result of the reputation and experience they acquired in our service in the pay of the Government. The matters they are called upon to testify about were invariably the subject of investigation by them at the expense of the Government. The Government does not receive the full consideration for that work of investigation unless it can use the information the mineral examiner acquired. For the Government to pay the expense of making an investigation, and then be required to pay " expert " fees in order to make use of the information it has already paid for getting appears to us to be manifestly unfair. We expect to pay a fair compensation for the time spent by the mineral examiner in giving his testimony; ordinarily he ought not to expect more than the equivalent of the salary he was getting when he left the service, together with his reasonable and necessary expenses. Therefore, hereafter when a former member of the Field Service is called upon to give testimony of the results of his investigations while a member of the service, you will advise him very clearly and explicitly that claims for so-called " expert " fees will not be approved, but that we will pay reasonable and fair compensation and expenses for the giving of his testimony. We are impressed with the fact that if they are disposed to be fair and reasonable, they will not ask or expect more.

Yours very truly,

Clay Tallman, *Commissioner.*

Circular No. 769

CONTESTS TO BE ASSIGNED DISTRICT LAND OFFICE NUMBERS

Department of the Interior,
General Land Office,
Washington, August 6, 1921.

Registers and Receivers, United States Land Offices.

Sirs: In paragraph 32 of Circular No. 616, approved August 9, 1918 (46 L. D. 513), it is directed, among other things, that:

> A series of numbers for contests arising in district land offices will be maintained, entirely distinct from the series used for applications, entries, etc., and said contest numbers will not be preceded by "O." The records of contests will be kept in the "Contest docket" (Form 4-051a).

While it is assumed that in each local land office a contest docket and a series of numbers for contests are regularly maintained as prescribed, it is found that many duplicate applications to contest and some contest records come to this office without showing any contest numbers. Although such a series of numbers is primarily for the convenience of the local land office, yet in the work of filing, checking, and adjudicating in this office contest numbers are of great convenience.

You are, accordingly, instructed that all contests must be numbered and that each application to contest, original and duplicate and additional copies, if any, must show the contest number assigned.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 793

ACTION ON APPLICATIONS TO CONTEST

Department of the Interior,
General Land Office,
Washington, December 5, 1921.

Registers and Receivers, and Chiefs of Field Divisions.

Sirs: Your attention is invited to rules 1 and 4 of the Rules of Practice (44 L. D. 395), which are as follows:

> Rule 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the land department.
>
> Any protest or application to contest filed by any other person shall be forthwith referred to the chief of field division, who will promptly investigate the same and recommend appropriate action.
>
> Rule 4. The register and receiver may allow any application to contest without reference thereof to the commissioner, but they must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

1. As soon as you have allowed any contest under which the contestant is seeking to acquire title or claiming an interest in the land involved, you should at once forward to this office without letter of

transmittal one of the copies of the application to contest or protest filed by the applicant with the words "For G. L. O. files" plainly written on the margin thereof. Where applications to contest are rejected by you they will be held in your office pending the closing of the case, whereupon you will transmit the record to this office as heretofore. Where an application to contest involves a final entry a copy thereof must be immediately forwarded to the General Land Office to prevent the inadvertent patenting of the land whether the application is by one who does or does not seek to acquire title to the land.

2. As soon as you have received applications to contest or protest from persons not seeking to acquire title to, or not claiming an interest in the land involved, you will at once forward such protest or application to contest to the proper chief of field division and report to him the facts within your knowledge or shown by your records which will in any way aid in making a field investigation relative thereto. You will thereafter suspend all further action affecting the entries involved until you have received recommendations from the chief of field division who will at as early a date as possible report to you relative to the advisability of ordering hearings under such protests or contests. Field reports will not be made direct to this office in such cases.

3. You should not forward copies of contest affidavits or protest to this office in cases where the contestant or protestant is not seeking to acquire title to, or not claiming an interest in the land involved, until after you have ordered hearings thereunder except in such cases where the protests or contests involve final entries.

4. You should not forward to the chief of field division copy of applications to contest or protest which are presented by persons seeking to acquire title except in cases which abate for want of prosecution or are voluntarily dismissed by protestants. In cases which abate for want of prosecution or are voluntarily dismissed by protestants, you should forward a copy of the application to the chief of field division with a notation thereon of the date on which same was abated or dismissed and a statement as to whether or not final proof has been submitted. The chief of field division will take appropriate action and make due report to this office on all cases of abated contests.

5. In cases where an application to contest is filed in your office against an entry as to which a chief of field division has filed an indorsement of "Withhold certificate, etc.," and no adverse proceedings have been directed by this office, you will notify the chief of field division of the filing of said application but you may proceed with the contest without awaiting report of the chief of field division.

6. In cases where an application to contest is filed involving an entry against which adverse proceedings have been directed by this office under circular of February 26, 1916 (44 L. D. 572), no decision should be made by you as to the allowance or disallowance of the application but the same should be held as junior to the Government contest.

Circular No. 164 of September 12, 1912, and Circular No. 204 of January 3, 1913, are hereby revoked.

Very respectfully.

William Spry, *Commissioner.*

[Reported, 48 L. D. 613]

CIRCULAR NO. 819

RELINQUISHMENT OF ENCUMBERED LANDS—NOTICE TO MORTGAGEE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 31, 1922.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to Rule of Practice 98 (44 L. D. 411), which provides:

> Transferees and encumbrancers of land, the title to which is claimed, or is in process of acquisition, under any public-land law shall, upon filing notice of the transfer or encumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had, affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or encumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where a like notation thereof will be made. Thereafter, such transferee or encumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

For the purpose of rendering this rule more effective in the protection of existing equities, you will see that in all cases where notice of a mortgage interest in land embraced within a subsisting entry, is filed, as provided in the above Rule of Practice, such mortgagee is given notice of any relinquishment of the entry that may be filed; and you will accept no relinquishment in such case unless the mortgagee joins therein, or is given opportunity to make such showing in the matter as he may desire, and 30 days from notice of the relinquishment may be allowed the mortgagee in which to express his assent to the relinquishment, or submit such statement or showing as he may desire. If the mortgagee fails to respond to the notice, or objects to the relinquishment of the entry, you will suspend action thereon and report the matter in full to this office, with your recommendation.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved March 31, 1922.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 839

RELATIVE TO PENDING CASES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 19, 1922.

Registers and Receivers, United States Land Offices.

SIRS: Among the thousands of cases handled each year by the General Land Office, it occasionally happens, even with the greatest of care, that final action is delayed in connection with cases because of the files becoming misplaced. In such an occurrence, in the absence of specific inquiry, it often happens that the case will lay dormant without action until at some time the party in interest calls attention to the delay in adjudication of the case.

The present administration is endeavoring to make final disposition of the older cases, to the end that the General Land Office may reach the point where we may be said to be current with our work. It is my pleasure to request your cooperation in this work, and to suggest to you, when you find a case, or any number of cases arising in your office, which have been pending in this office an unreasonable length of time, that you write us, calling attention to the delay, with such comment as you may think proper. May I ask also that prompt action be had on all cases requiring your consideration.

I assure you that upon receipt of such communications, this office will endeavor to expedite action at the earliest opportunity.

Very respectfully,

Geo. R. Wickham,
Acting Commissioner.

[Reported, 49 L. D. 535]

Circular No. 889

REINSTATEMENT OF CANCELED ENTRIES

Department of the Interior,
General Land Office,
Washington, April 16, 1923.

Registers and Receivers, United States Land Offices.

Gentlemen: Your attention is invited to 15 L. D., 659, in which it was held:

> An application for the reinstatement of a canceled entry, while pending, operates to reserve the land covered thereby from other disposition.

Applications for reinstatement of canceled entries must be filed in the proper district land office and must be executed by the entryman, his heirs, legal representatives, assigns, or transferees, as the case may require. If made by other than the entryman, such petition for reinstatement must fully set forth the nature and extent of petitioner's interest in the land, how acquired, and the names and addresses of any other person or persons who have or claim an interest therein. All petitions for reinstatement should set forth all facts and state clearly and concisely upon what grounds reinstatement is urged. Such petition must be sworn to before some officer qualified to administer oaths and having an official seal, or, if sworn to before an officer who does not have an official seal, his official acts must be attested by some proper officer.

Applications for reinstatement of canceled entries executed by agents and attorneys will not be recognized. Your attention is called to the regulations governing the recognition of agents and attorneys before district land offices, approved April 20, 1907 (35 L. D. 534). Paragraph 8 thereof is hereby amended to read as follows:

> Every attorney must, either at the time of entering his appearance for a claimant or contestant or within 10 days thereafter, file written authority for

such appearance, signed by said claimant or contestant, and setting forth his or her present post-office address. Upon a failure to file such written authority, it is the duty of the register and receiver to no longer recognize him as attorney in the case.

Whenever application for reinstatement of a canceled entry is filed you will transmit same with the next returns to this office, together with report as to the present status of the land involved. Thereafter you will not permit disposition of the land until the application for reinstatement is finally adjudicated. All subsequent applications should be held suspended unless on account of some special reason you should deem it proper to forward same to this office to be considered in connection with the pending application for reinstatement. If a junior application be forwarded, report should accompany it setting forth the reasons for which you deemed it advisable to transmit same.

Should an application for reinstatement be filed not conforming to the foregoing, you will promptly advise the party thereof, calling his attention to the defects and allow 15 days in which to file a proper application. At the proper time you will make report setting forth what action the applicant has taken.

Very respectfully,

William Spry, *Commissioner.*

Approved April 16, 1923.

E. C. Finney,
First Assistant Secretary.

DESCRIPTIONS OF LAND IN FINAL CERTIFICATES AND PATENTS

Department of the Interior,
General Land Office,
Washington, September 19, 1923.

Chiefs of Divisions, General Land Office:

All patents issued for public lands by this office are supposed to be in conformity with the plat of survey. In the descriptions of land in final certificates, in the different kinds of lists made up, or presented to this office, this rule has not been followed uniformly. It is therefore directed that you advise each one of the employees in your division that in making up lists, examining final certificates or writing letters as a basis for patents, a comparison will be made with the plats of survey covering such lands and the lands in such lists, etc., shall be described according to the descriptions shown on such plats of survey, except that where all of a section is involved it will be sufficient to say "all sec. 1 or sec. 3," etc., without giving lots 1, 2, 3, and 4, S. ½ NE. ¼, S. ½ NW. ¼ and S. ½ of the section. In every instance, however, where a part of the section only is involved and lots appear in that part, the lots must be given rather than what would ordinarily be a quarter section or a quarter quarter section. For instance, lots 3 and 4 constitute what would ordinarily be the W. ½ SW. ¼ sec. 31, so that in such cases the lots must be used.

This is in line with the instructions to registers and receivers in Circular No. 397.

Very respectfully,

William Spry, *Commissioner.*

CIRCULAR No. 911

INSTRUCTIONS REGARDING CLOSING OF CONTESTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 2, 1924.

Registers and Receivers, United States Land Offices.

SIRS: It appears to be the practice in many of the local land offices, when contests are abated, closed for want of prosecution, or dismissed because of defective contest affidavits and no appeal filed, to transmit the papers to this office with an undated and unsigned memorandum attached thereto purporting to show what action has been taken in connection therewith, and reporting that the case is closed.

Such memorandum statements should in the future be dated and signed, and officially made a part of the record in order that this office may be governed thereby in making the proper notations upon its records.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

CIRCULAR No. 921

EXAMINATION OF RECORDS BEFORE ALLOWING ENTRIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 17, 1924.

Registers and Receivers, United States Land Offices.

GENTLEMEN: My attention has been recently called to several cases where homestead entries have been erroneously allowed by the local land officers for the reason that the lands were within the limits of a national forest and had not been listed under the act of June 11, 1906, or for other reasons which prohibit entries being allowed.

Such action has caused the entryman loss of time and a great amount of money in establishing and maintaining residence and otherwise complying with the law on the supposition that his entry was properly allowed and after he has done all that is required of him, it is discovered that the entry must be canceled.

In order to avoid repetition of such conditions, you are directed to make a thorough and careful examination of all the records of your office, prior to the actual allowance of any entry to be sure that there are no withdrawals or other impediments to favorable action. Furthermore, after allowance if you discover any reason to doubt the validity of the entry, the same should be reported immediately to this office.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

SIGNATURE AS EX OFFICIO REGISTER AND RECEIVER

Department of the Interior,
General Land Office,
Washington, June 1, 1925.

Chiefs of Divisions:

The office regulations of March 27, 1877 (4 Copp's Land Owner, p. 25), in so far as the commissioner is required to sign as ex officio register and receiver of entries, certificates, etc., touching business before the General Land Office from discontinued land districts, are hereby revoked, and hereafter all letters, orders, entries, certificates, etc., arising in connection with the disposal of the public lands in States in which there are no longer land offices will be signed by the commissioner, assistant commissioner, or the acting assistant commissioner as in the case of other business before the office.

It has been the practice since 1877 to charge the same fees and commissions on entries made in the States within which there are no land offices as in the States in which there are such offices. This practice will be continued.

William Spry, *Commissioner.*

Circular No. 1051

DISPOSITION OF EVIDENCE OF SERVICE OF NOTICE OF PREFERENCE RIGHT

Department of the Interior,
General Land Office,
Washington, February 12, 1926.

Registers, United States Land Offices.

Gentlemen: In cases where a preference right of entry is accorded by section 2 of the act of May 14, 1880 (21 Stat. 140), you will, after service of notice of such right upon contestant and the expiration of the 30 days allowed for exercise thereof, transmit to this office by special letter the evidence of service for filing with the canceled entry record.

The service to be effective must be made in accordance with the departmental decision in the case of McGraw *v.* Lott (44 L. D. 367).

All necessary notations should be made upon your records.

Very respectfully,

Thos. C. Havell,
Assistant Commissioner.

[Reported, 51 L. D. 398]

REPORTS BY GEOLOGICAL SURVEY ON RAILROAD AND STATE SELECTIONS, SCRIP APPLICATIONS, AND NONMINERAL ENTRIES

Department of the Interior,
Washington, D. C., March 13, 1926.[8]

The Commissioner of the General Land Office:

I have your letter ("A"–CAO) of February 23, 1926, requesting instructions relative to the class of cases in which reports by the Geological Survey should be secured.

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[8] See instructions of May 14, 1929, p. 1421.

All prior instructions on the subject are hereby revoked, and in the future you will be governed by the following:

You will call upon the Geological Survey for a report on all railroad and State selections, and on all soldiers' additional and scrip applications, as to whether the lands applied for are valuable for coal or other mineral deposits, or whether they are valuable for power and reservoir purposes, or needed in connection with any contemplated power or reservoir-site withdrawal, except in cases where a special agent or an inspector has made a field investigation and submitted a report covering the subject.

A report by the Geological Survey on lands embraced in a homestead or desert-land entry should be requested only if the land has been reported or is believed to be valuable for coal or other minerals and the report of a field investigation is not available.

E. C. Finney,
First Assistant Secretary.

PROTESTS AND COMPLAINTS

Department of the Interior,
General Land Office,
Washington, March 22, 1926.

To Registers and Division Inspectors:

With the view of establishing a closer cooperation as between the district land offices and the inspection divisions, to the end that greater efficiency and a more prompt action may be obtained, the following direction is made:

Where any person may make complaint in any office, alleging the failure of any individual to comply with, or who may be violating, directly or indirectly, any law relating to the public lands or entries made thereunder, you will cause to be made a written note of the name and address of complainant with brief memorandum of the character of complaint, the name and address of person complained of, and the description of land involved. This memorandum should be promptly transmitted to the division inspector having charge of field investigations in your district. All complaints made by letter should be immediately on receipt thereof forwarded in the same manner.

On receipt of such complaints the division inspector will immediately communicate with complainant and take such action as may be warranted.

Compliance with the foregoing will result in mutual benefit.

Very respectfully,

William Spry, *Commissioner.*

CIRCULAR No. 1068 [9]

RELATIVE TO FILE NUMBERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 28, 1926.

Registers, United States Land Offices:

SIRS: In numerous instances recently we have received letters from district land offices in reply to ones written by this office, in which no reference was given to the serial, letter, or file number appearing on the letter to which your letter is in reply. The omission of such reference in your letters requires a great deal of research upon their receipt here to identify the case to which it belongs. You will, therefore, follow strictly the regulations heretofore promulgated on this subject and in each instance state the identifying file number of this office.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 51 L. D. 484]

CIRCULAR No. 1075 [10]

ACCOUNTS—FEES OF WITNESSES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 29, 1926.

Division Inspectors, Inspectors, and Registers.

SIRS: Section 2 of the act of January 31, 1903 (32 Stat. 790), provides as to witnesses in land hearings that—

> The fees and mileage of witnesses shall be the same as that provided by law in the district courts of the United States in the district in which such land offices are situated.

Heretofore certain distinction has been made between allowances to witnesses in Western States and Eastern States, but such difference is eliminated by the act of April 26, 1926 (44 Stat. 323), section 3 of which provides:

> Witnesses attending in such courts, or before such Commissioners, shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same $2, and 5 cents per mile for going from his or her place of residence to the place of trial or hearing and 5 cents per mile for returning: *And provided further*, That witnesses (other than salaried employees of the Government and detained witnesses) * * * who attend * * * at points so far removed from their respective residences as to prohibit return thereto from day to day, shall, when this fact is certified to in the order of the court or the Commissioner for payment, be entitled, in addition to the compensation provided by existing law, as modified by this act, to a per diem of $3 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to attend court and return home.

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[9] See Circular No. 813, p. 128.
[10] See Circulars Nos. 1117, p. 1128; 1123, p. 1129; and 1142, p. 152.

The Comptroller General in a decision dated June 21, holds—

> that witnesses in land hearing cases may be paid the per diem for expenses of subsistence under the same circumstances and conditions as are prescribed in the statute with respect to witnesses attending United States courts or Commissioners, the certifications as to the existence of such circumstances and conditions to be by the officer in charge of the hearing.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 51 L. D. 547]

RULES OF PRACTICE IN CASES BEFORE THE UNITED STATES DISTRICT LAND OFFICES, THE GENERAL LAND OFFICE, AND THE DEPARTMENT OF THE INTERIOR [e]

(Effective February 1, 1911; reprint September 1, 1926, with amendments)

Department of the Interior,
General Land Office,
Washington, September 1, 1926.

I. Proceedings Before Registers

INITIATION OF CONTESTS

Rule 1. Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Land Department.

Any protest or application to contest filed by any other person shall be forthwith referred to the division inspector, who will promptly investigate the same and recommend appropriate action.

APPLICATION TO CONTEST

Rule 2. Any person desiring to institute a contest must file, in duplicate, with the register, application in that behalf, together with statement under oath containing:

(*a*) Name and residence of each party adversely interested, including the age of each heir of any deceased entryman.

(*b*) Description and character of the land involved.

(*c*) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(*d*) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(*e*) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(*f*) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

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[e] Rule 28 was amended by Circular No. 1172 dated November 3, 1928, p. 1129.

(*g*) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(*h*) Address to which papers shall be sent for service on such applicant.

Rule 3.[11] The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

Rule 4. The register may allow any application to contest without reference thereof to the commissioner; but he must immediately forward copy thereof to the Commissioner of the General Land Office, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

CONTEST NOTICE

Rule 5. The register shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(*a*) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(*b*) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

(For contents of notice when publication is ordered, see Rule 9.)

SERVICE OF NOTICE

Rule 6. Notice of contest may be served on the adverse party personally or by publication.

Rule 7. Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir.[12] If the heirs of the entryman are nonresident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under 14 years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by deliverying a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

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[11] Amended Sept. 23, 1915.

[12] Amended July 13, 1921.

Rule 8.[13] Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of service of notice by publication is made not later than 20 days after the fourth publication, as specified in Rule 10, the contest shall abate: *Provided*, That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

SERVING NOTICE BY PUBLICATION

Rule 9. Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the records of the land office and of the postmaster nearest the land in controversy and also of named persons residing in the vicinity of the land.

Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

The affidavit of contest need not be published.

There shall be published with the notice a statement of the dates of publication.

Rule 10.[14] Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

Copy of the notice as published shall be posted in the office of the register and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as hereinabove provided.

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[13] Amended Nov. 15, 1912, and Jan. 6, 1925.

[14] Amended Mar. 7, 1911. See Circular No. 274, p. 1094.

Rule 11.[15] Proof of publication of notice shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with these rules.

Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the register as to posting in the district land office.

Proof of the mailing of notice shall be by affidavit of the person who mailed the notice, attached to the postmaster's receipt for the letter or (if delivered) the registry return receipt.

DEFECTIVE SERVICE OF NOTICE

Rule 12. No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the register.

ANSWER BY CONTESTEE

Rule 13. Within 30 days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within 20 days after the fourth publication, as prescribed by these rules, the party served must file with the register answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provided for the personal service of notice of contest.

Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

FAILURE TO ANSWER

Rule 14.[16] Upon failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the register will forthwith forward the case, with recommendation thereon, to the General Land Office, and notify the parties by ordinary mail of the action taken.

DATE AND NOTICE OF TRIAL

Rule 15. Upon the filing of answer and proof of service thereof the register will forthwith fix a time and place for taking testimony, and notify all parties thereof by registered-letter mail not less than 20 days in advance of the date fixed.

PLACE OF SERVICE OF PAPERS

Rule 16. Proof of delivery of papers required to be served upon the contestant at the place designated under clause "*h*" of Rule 2 in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

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[15] Amended Jan. 6, 1925.

[16] Amended Apr. 17, 1926.

Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE

Rule 17. Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that—

(*a*) The matter to which such witness would testify, if present, is material.

(*b*) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(*c*) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(*d*) That the continuance is not sought for mere purposes of delay

Rule 18. One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

Rule 19. No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

DEPOSITIONS AND INTERROGATORIES [f]

Rule 20. Testimony may be taken by deposition when it appears by affidavit that—

(*a*) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(*b*) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(*c*) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness can not be obtained.

Rule 21. The party desiring to take deposition must serve upon the adverse party and file with the register affidavit setting forth the name and address of the witness and one or more of the above-named grounds for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

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[f] See Circulars of May 9, 1913, p. 1093, and Apr. 6, 1914 (No. 311), p. 1095.

Rule 22. The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding rule, serve and file cross-interrogatories.

Rule 23. After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, commission to take the deposition shall be issued by the register directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

Ten days' notice of the time and place of taking such deposition shall be given by the party in whose behalf such deposition is to be taken to the adverse party.

Rule 24. The officer before whom such deposition is taken shall cause each interrogatory to be written out and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

Rule 25. The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be inclosed in a sealed package, indorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the register, who will indorse thereon the date of reception thereof, and the time of opening said deposition.

Rule 26. If the officer designated to take the deposition has no official seal, certificate of his official character under seal must accompany the return of the deposition.

Rule 27. Deposition may, by stipulation filed with the register be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

Rule 28.[g] Testimony may, by order of the register and after such notice as he may direct, be taken by deposition before a United States commissioner, or other officer authorized to administer oaths near the land in controversy, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the register in the like manner as is provided with reference to depositions.

Rule 29. No charge will be made by the register for examining testimony taken by deposition.

Rule 30.[h] Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by registers.

Rule 31. When the officer designated to take deposition can not act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

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[g] See Amendment, p. 1129.

[h] See Circular No. 1142, p. 152.

Rule 32. No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

TRIALS

Rule 33. The register and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

Rule 34. The register will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officer should, whenever necessary, personally interrogate and direct the examination of a witness.

Rule 35. In preemption cases the register will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of persons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of his office.

Rule 36. In like manner, under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined.

Rule 37. Due opportunity will be allowed opposing claimants to cross-examine witnesses.

Rule 38. Objections to evidence will be duly noted, but not ruled upon, by the register, and such objections will be considered by the commissioner. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

Rule 39. At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided*, *however*, That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispensed with.

The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

Rule 40. If a defendant demurs to the sufficiency of the evidence, the register will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

When testimony is taken, before an officer other than the register, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the register will rule upon such demurrer when the record is submitted for his consideration.

If said demurrer is sustained, the register will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

Upon the completion of the evidence in a contest proceeding, the register will render a report and opinion thereon making full and specific reference to the posting and annotations upon the records.

Rule 41. The register will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the commissioner.

NEW TRIAL

Rule 42. The decision of the register will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: *Provided, however*, That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

No appeal will be allowed from an order granting new trial, but the register will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony theretofore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

Rule 43. Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the register not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

Rule 44. Motions for new trial will not be considered or decided in the first instance by the commissioner or the Secretary of the Interior, or otherwise than on review of the decision thereof by the register.

Rule 45. If motion for new trial is not made, or if made and not allowed, the register will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the commissioner, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

The register will not, after forwarding of decision, as above provided, take further action in the case unless so instructed by the commissioner.

FINAL PROOF PENDING CONTEST

Rule 46.[17] The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

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[17] Amended May 16, 1916.

In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

The final proof should be retained in the district land office until the record in the contest case is forwarded to the General Land Office, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

APPEALS TO COMMISSIONER

Rule 47. No appeal from the action or decision of the register will be considered unless notice thereof is served and filed in the district land office in the manner and within the time specified in these rules.

Rule 48. Notice of appeal from the decision of the register shall be served and filed with such register within 30 days after receipt of notice of decision: *Provided*, *however*, That when motion for new trial is presented and denied, notice of such appeal shall be served within 15 days after receipt of notice of the denial of said motion.

Rule 49. No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the register.

Rule 50. Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal, in the form of specifications of error, which shall be separately stated and numbered; where error is based upon insufficiency of the evidence to justify the decision, in the assignment thereof the particulars wherein it is deemed insufficient must be specifically set forth in the notice. All grounds of error not assigned or noticed and argued in the brief will be considered as waived.

Upon failure to serve and file notice of appeal as herein provided the case will be closed.

Rule 51. When any party fails to move for a new trial or to appeal from the decision of the register within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of fraud or gross irregularity.

No case will be remanded for any defect which does not materially affect the aggrieved party.

Rule 52. All documents received by the register must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the register, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF

Rule 53. A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat. 140), must pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

Rule 54. Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

Rule 55. Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the preemption, homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880, the costs of contest will be imposed as prescribed in the second clause of Rule 53.

Rule 56. The only cost of contest chargeable by registers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

Rule 57. Registers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

Rule 58. Upon the filing of the transcript of the testimony in the local office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

Rule 59. When hearings are ordered on behalf of the Government, all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by Rule 53.

Rule 60. The costs provided for by the preceding rules will be collected by the register when the parties are brought before him in obedience to the order for hearing.

Rule 61 was abolished by Circular No. 962, approved October 10, 1924 (50 L. D. 656).

PREPARATION OF NOTICES

Rule 62. All notices and other papers not required to be served by the register must be prepared and served by the respective parties.

Rule 63. The register will require proper provision to be made for such notices not specifically provided for in these rules as may become necessary in the usual progress of the case to final decision.

APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS

Rule 64. To facilitate appeals from his action relative to applications to file, enter, or locate upon the public lands, the register will—

(*a*) Indorse upon every rejected application the date of presentation and reasons for rejection.

(*b*) Promptly advise the party in interest of the action and of his right of appeal.

(*c*) Note upon his records a memorandum of the transaction.

Rule 65. The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the district land office. The notice of appeal, when filed, will be forwarded to the General Land Office with full report upon the case, which should recite all the facts and proceedings had and must embrace the following particulars:

(*a*) The original application, with reasons for the rejection thereof.

(*b*) Description of the tract involved and statement of its status, as shown by the records of the district office.

(*c*) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

II. Proceedings Before the District Cadastral Engineer

Rule 66. The proceedings in hearings and contests before the district cadastral engineer shall, as to notices, depositions, and other matters, be governed as nearly as may be by the rules prescribed for proceedings before registers, unless otherwise provided by law.

III. Proceedings Before the Commissioner of the General Land Office and Secretary of the Interior

EXAMINATION AND ARGUMENT

Rule 67. The commissioner will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

Rule 68. No additional evidence will be admitted or considered by the commissioner unless offered under stipulation of the parties or in support of a mineral application or protest: *Provided*, *however*, That the commissioner may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the commissioner will not be considered in finally determining any controversy upon the merits.

Rule 69. After receipt of the record by the commissioner 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the commissioner, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do: *Provided*, That where no appeal has been filed the case may be immediately considered and disposed of.

Rule 70. If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the commissioner therefor.

Rule 71. In the discretion of the commissioner, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

REHEARINGS

Rule 72. No motion for rehearing of any decision rendered by the Commissioner of the General Land Office will be allowed.

MOTIONS

Rule 73. No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

In ex parte cases, where the entryman has been allowed by the commissioner to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the commissioner shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

APPEAL FROM THE COMMISSIONER TO THE SECRETARY

Rule 74. Except as herein otherwise provided, an appeal may be taken to the Secretary of the Interior from the final decision of the commissioner in any proceeding relating to the disposal of the public lands and private claims.

Rule 75. No appeal shall be had from the action of the commissioner affirming the decision of the register in any case where the party adversely affected shall have failed to appeal from the decision of said register.

Rule 76. Notice of appeal from the commissioner's decision must be served upon the adverse party and filed in the office of the register or in the General Land Office within 30 days from the date of service of notice of such decision.

Rule 77. When the commissioner considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

Rule 78. In proceedings before the commissioner in which he shall decide that a party has no right to appeal to the Secretary, such party may apply to the Secretary for an order directing the commissioner to certify said proceedings to the Secretary and suspend action until the Secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

Rule 79. When the commissioner shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the Secretary for an order certifying the record as hereinabove provided.

Rule 80. The appellant will be allowed 20 days after service of notice of appeal within which to serve and file brief and specification of error, as provided by rule 50, the adverse party 20 days after service of such within which to serve and file reply thereto; appellant will be allowed 10 days after service of such reply within which to serve and file response: *Provided, however*, That if either party is not represented by counsel having offices in the city of Washington, 10 days in addition to each period above specified will be allowed within which to serve and file the respective briefs.

No arguments otherwise than above provided shall be made or filed without permission of the Secretary or commissioner granted upon notice to the adverse party.

Rule 81. (Abolished.)

ORAL ARGUMENT BEFORE THE SECRETARY

Rule 82.[18] Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

REHEARING OF SECRETARY'S DECISION

Rule 83.[19] Motions for rehearing before the Secretary must be filed within 30 days after receipt of notice of the decision complained of and will act as a supersedeas of the decision until otherwise directed by the Secretary. Such motions, briefs, and arguments must not be served on the opposite party and must be filed directly with the Secretary of Interior, Washington, D. C.

Any such motion must state concisely and specifically the grounds upon which the motion for rehearing is based and be accompanied by brief and argument in support thereof.

If proper grounds are not shown the rehearing will be denied and sent to the files of the General Land Office, whereupon the commissioner will proceed to execute the decision before rendered. If, upon examination, grounds sufficient for rehearing are shown, a rehearing will be granted and the moving party will be notified that he will be allowed 15 days from receipt of notice within which to serve a copy of his motion, together with all argument in support thereof, on the opposite party, who will be allowed 30 days thereafter in which to file and serve answer, brief, and argument. Thereafter the cause or matter will be again considered and appropriate action taken, which may consist either in adhering to the former decision or modifying or vacating the same, or the making of any further or other order deemed warranted.

As applied to the Territory of Alaska, the periods of time granted by this rule shall be doubled.

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[18] Amended Nov. 6, 1911.

[19] Amended Oct. 25, 1915.

MOTIONS FOR REVIEW AND REREVIEW

Rule 84. Motions for review and rereview are hereby abolished.

SUPERVISORY POWER OF SECRETARY

Rule 85. Motion for the exercise of supervisory power will be considered only when accompanied by positive showing of extraordinary emergency or exigency demanding the exercise of such authority.

In proceedings before the Secretary of the Interior the same rules shall govern, in so far as applicable, as are provided for proceedings before the Commissioner of the General Land Office.

Rule 86. No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law.

ATTORNEYS

Rule 87.[20] Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat. 101).

Rule 88.[i] In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

Where a party is represented by more than one attorney service of notice or other papers upon one of said attorneys shall be sufficient.

Rule 89. No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

Rule 90. Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

Rule 91. Verbal or other inquiries by parties or counsel directed to any employee of the department, except the commissioner, assistant commissioner, or chief of division of the General Land Office, or the Secretary and Assistant Secretaries, the Solicitor, members of the Board of Appeals, or the Supervising Attorney, or with the consent of one or more of said officers, is expressly forbidden.

Rule 92. Abuse of the privilege of examining records of the department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

SERVICE OF NOTICES

Rule 94.[21] Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the General Land Office, except in case of notice to resident attorneys, in which case one day will be allowed.

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[20] Amended Apr. 9, 1915.

[21] Amended Apr. 30, 1917.

[i] See instructions of August 13, 1928, p. 176.

In computing time for service of papers under these rules of practice the first day shall be excluded and the last day included: *Provided*, That where the last day is a Sunday, a legal holiday, or half holiday such time shall include the next full business day.

Rule 95.[22] Notice of all motions and proceedings before the commissioner or Secretary, except as specified below, shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof. As to motions for rehearing, petitions for certiorari and petitions for the exercise of supervisory authority before the Secretary, service of notice shall be made only after such proceeding has been entertained and service directed, as provided by Rule 83.

Rule 96. Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are applicable. In such cases the commissioner or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

INTERVENTION

Rule 97. No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

HOW TRANSFEREES AND ENCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS

Rule 98.[23] Transferees and encumbrancers of land the title to which is claimed or is in process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or encumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the General Land Office, where like notation thereof will be made. Thereafter such transferee or encumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS

Rule 99.[24] The Secretary and the Commissioner of the General Land Office will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a district land office with any paper the register will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

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[22] Amended Sept. 28, 1917. [23] Adopted Sept. 23, 1915. [24] Adopted Nov. 10, 1915.

NOTICE OF PREFERENCE RIGHT

Rule 100. Where preference right of entry is awarded under section 2 of the act of May 14, 1880 (21 Stat. 140), the register will, after service of notice of such right upon contestant and the expiration of the 30 days allowed for exercise thereof, transmit to the Commissioner of the General Land Office by special letter the evidence of service for filing with the canceled entry record. A fee of $1 for giving such notice must be tendered to the register of the district land office before any application for the land will be approved.

Very respectfully,

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

Circular No. 1117 [25]

ACCOUNTS: PER DIEMS OF WITNESSES

Department of the Interior,
General Land Office,
Washington, March 28, 1927.

Division Inspectors and Special Disbursing Agents.

Sirs: The Comptroller General, construing section 3 of the act of April 26, 1926 (44 Stat. 323), having held in a decision, dated June 25, 1926 (5 Comp. Gen. 1028), that—

> In determining the number of days for which the per diems of $2 and $3 are to be allowed under said act the day is to be regarded as beginning on the hour at which it is necessary for the witness to leave his home in order to arrive at the place of trial at the appointed time, and the per diem will accrue for each period of 24 hours thereafter until the hour on which the witness could arrive at his home by the first available transportation after his dismissal as a witness, any fractional part of a day under such computation to be regarded as a day for per diem purposes—

it will be necessary for vouchers for witnesses' services to show date and hour of beginning and of termination of the period for which either per diem is allowed.

Very respectfully,

William Spry, *Commissioner.*

Approved March 28, 1927.

E. C. Finney,
First Assistant Secretary.

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[25] See Circulars Nos. 1123, p. 1129, and 1142, p. 152.

CIRCULAR No. 1123

ACCOUNTS: PER DIEM OF WITNESSES[26]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 16, 1927.

Division Inspectors and Special Disbursing Agents.

GENTLEMEN: The Comptroller General, having held in a decision of January 21, 1927 (6 Comp. Gen. 480), quoting the syllabus, that—

> The per diem allowance for subsistence, authorized by section 3 of the act of April 26, 1926 (44 Stat. 323), to be paid to jurors and witnesses while in attendance before United States courts and United States commissioners upon the certification by the court or commissioner that the place of holding court is so far removed from residence as to prohibit return thereto "from day to day" is to be computed upon the calendar day—

Circular No. 1117 is modified accordingly, it being understood that the Comptroller General modifies his decision of June 25, 1926, quoted in such circular by inserting " for each calendar day " in place of " for each period of 24 hours."

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

JOHN H. EDWARDS,
Assistant Secretary.

[See 52 L. D. 503]

CIRCULAR No. 1172

RULE OF PRACTICE 28 AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 3, 1928.

Registers, United States Land Offices.

GENTLEMEN: Your attention is called to departmental order dated October 26, 1928, which amended rule 28 of the Rules of Practice to read as follows:

> Rule 28. Testimony may, by order of the register and after such notice as he may direct, be taken before a United States commissioner or other officer authorized to administer oaths, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the register in the like manner as is provided with reference to depositions.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

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[26] See Circular No. 1142, p. 152.

PREEMPTIONS

PREEMPTIONS[1]

The laws which provided for preemptions on the public lands of the United States were repealed by the fourth section of the act of March 3, 1891 (26 Stat. 1095), which reads as follows, viz:

> SEC. 4. That chapter four of title thirty-two, excepting sections twenty-two hundred and seventy-five, twenty-two hundred and seventy-six, twenty-two hundred and eighty-six, of the Revised Statutes of the United States, and all other laws allowing preemption of the public lands of the United States, are hereby repealed; but all bona fide claims lawfully initiated before the passage of this act, under any of said provisions of law so repealed, may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed.[2]

For information regarding the conditions on which bona fide claims lawfully initiated before the passage of the repealing act may be perfected, the following instructions are presented, viz:

Preemption is the exercise of a right by a person possessing the qualifications required by statute who has made settlement in person on public land subject to preemption, not exceeding 160 acres, inhabited and improved it, and erected a dwelling thereon, to obtain title in preference to any other, by entry and purchase at the price at which the land is held.

CLASS OF LANDS SUBJECT TO PREEMPTION

Public lands of the United States to which the Indian title has been extinguished and which are not included in any reservation by any treaty, law, or proclamation of the President, for any purpose, which are not included within the limits of any incorporated town or selected as the site of a city or town; which are not actually settled upon nor occupied for purposes of trade and business and not for agriculture, and on which there are not situated any known mines or salines are subject to preemption. (Sec. 2258, Rev. Stat.)

QUALIFICATIONS OF PREEMPTORS

A preemptor must be the head of a family, a widow, or single person over the age of 21 years and a citizen of the United States, or one who has declared his intention to become a citizen, as provided by the naturalization laws.

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[1] Reprint of Appendix 84 of circular of Jan. 25, 1904.

[2] This section was qualified by sec. 10 of the act so as to continue application of preemption laws to certain Indian lands.

No person can acquire any right of preemption who is the proprietor of 320 acres of land in any State or Territory, nor who quits or abandons his residence on his own land to reside on the public land in the same State or Territory.

PROCEEDINGS TO ACQUIRE TITLE TO LAND BY PREEMPTION

A party desiring to preempt a tract of land should carefully and in person examine the land, be certain of its true description according to the public surveys, and satisfy himself as to its character and desirability for purposes of residence and cultivation, and that there is no other valid claim to it. He is bound to personally know the land he claims, and any mistakes that might have been avoided with proper diligence are at his own risk.

Having selected the land he proposes to claim, he should move upon it and make an actual settlement thereon in person. He must go in person upon the land and perform substantial acts as a bona fide actual settler thereon before he can acquire any right as a preemptor.

When he has done this he may file his declaratory statement in the district land office. This may be done in person or through the mails, but he can not file a declaratory statement before he has actually settled upon the land. Illegal filings resulting from the willful fault or gross negligence of the preemptor exhaust the preemption right.

A filing without actual settlement is illegal, and no rights are acquired thereby, although a subsequent bona fide settlement may be recognized if made before the intervention of a valid adverse claim and duly followed up by the proper inhabitancy and improvement.

If the land is "offered," his declaratory statement must be filed within 30 days after he becomes a settler on the land. (Form No. 4–534.)

If the land is surveyed and "unoffered," he has three months after becoming a settler on the land within which to make his filing. (Form No. 4–535.)

Settlers on unsurveyed land have three months after the plat of township survey is filed in the district land office within which to put their claims on record.

Failure to file a declaratory statement within the time prescribed makes the land liable to the claim of an adverse settler who does file notice of his intention at the proper time and otherwise complies with the conditions of the law. (Sec. 2265, Rev. Stat.)

The declaratory statement must describe the land settled upon, state the date of settlement, and declare the intention of the party to claim the same under the preemption laws. The declaratory statement must be in writing or printed according to the prescribed form and be witnessed by not less than two persons who live in the neighborhood of the land. The place of residence of claimant's witnesses and the postoffice address of claimant must be stated in the declaration.

The existence of a preemption filing on a tract of land does not prevent another filing for the same land, subject to any valid rights acquired by virtue of any former settlement and filing.

The land-office fee for filing a declaratory statement is $2, except in the Pacific States and Territories, where the fee is $3.

SECOND PREEMPTION FILING.

The second filing of a declaratory statement by any preemptor who was qualified at the date of his first filing is illegal. (Sec. 2261, Rev. Stat.; Baldwin *v.* Stark, 107 U. S. 463; also Secretary's decision of February 27, 1884, case of Raymond, 10 Copp, 395.) Where the first filing, however, was illegal from any cause not the willful act of the party, he has the right to make a second and legal filing. (Goist *v.* Bottum, 5 L. D. 643.) And the right to make a second filing will be recognized when, through no fault or negligence of the preemptor, consummation of title was not practicable under the first. (Paris Meadows et al., 9 L. D. 41.)

RELINQUISHMENT OF PREEMPTION FILINGS

Preemption filings may be relinquished by the claimants in writing, filed with the register and receiver of the proper district land office, or the relinquishment may be executed by the claimant on the back of the declaratory statement receipt. Notice of such relinquishment should be promptly forwarded by the register to the Commissioner of the General Land Office for his information.

PROOF AND PAYMENT

On offered lands proof and payment must be made within 12 months from date of settlement.

If the land is unoffered, proof and payment may be made within 33 months from date of settlement, or in case of unsurveyed lands from date of filing plat of survey in the district office.

The preemption laws are intended for the benefit of persons making settlement upon the public lands, followed by residence and improvement and the erection of a dwelling thereon. Residence must be both continuous and personal. (Bohall *v.* Dilla, 114 U. S. Sup. C. Rep., 47, 51.)

"It was necessary for the preemptor to prove that he occupied the premises continuously after filing his declaratory statement." (Ibid.)

The department requires, in evidence of the genuineness of settlement, that six months of actual residence shall be passed before proof and payment, and then proof of compliance with law in all respects must be sufficient and satisfactory. A party offering proof in the shortest time can not be excused on that account for any noncompliance with the requirements of residence and agricultural improvement, since he is not obliged to make proof and payment at the earliest period the law allows, but has sufficient time within which to fully comply with the law.

A failure to make proof and payment as prescribed by law renders the land subject to appropriation by the first legal applicant, but in the absence of an adverse claim proof and payment can be made after the expiration of the 12 or 33 months allowed.

Failure to inhabit and improve the land in good faith, as required by law, renders the claim subject to contest and the entry to investigation and cancellation.

Final proof in preemption cases must be made to the satisfaction of the register and receiver, whose decision, as in other cases, is subject to examination and review by this office and department.

When two or more settlers on unsurveyed land are found upon survey to be residing upon or to have valuable improvements upon the same smallest legal subdivision, they may make joint entry of such tract and separate entries of the residue of their claims. This joint entry may be made in pursuance of contract between the parties or without it. (Rev. Stat., sec. 2274.)

Publication of notice to make proof is required in the same manner as in homestead and other cases.[a]

In making final proof the preemptor must appear in person with his witnesses at the district office, or before the clerk of the county court or of a court of record of the county or parish and State, or district and Territory, in which the land is situated, or before any United States commissioner appointed under act of May 28, 1896 (29 Stat. 184), within the land district, in accordance with the act of March 11, 1902 (32 Stat. 63), and make the affidavit and proof prescribed, or in Territories the proof may be made before a United States court commissioner as provided by act of March 2, 1895 (28 Stat. 744).

It is held, however, that "the law does not authorize the making of such proofs and affidavits before such commissioner outside of the county and State, or district and Territory, in which the lands are situated, unless the lands are situated in any unorganized county, which case is otherwise fully provided for by law." (Secretary's decision of October 2, 1890, case of Edward Bowker, 11 L. D. 361.)

The preemptor is required to make oath that he has not previously exercised his preemption right; that he is not the owner of 320 acres of land; that he has not settled upon and improved the land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; that he has not made any contract or agreement, directly or indirectly, in any way or manner, with any person whomsoever, by which the title he may acquire from the United States shall inure in whole or in part to the benefit of any person except himself. (See Form 4–061.)

Any person swearing falsely forfeits all right to the land and to the purchase money paid, besides being liable to prosecution under the criminal laws of the United States.

Final proof, in addition to the affidavit of claimant, must consist of the testimony of the claimant, corroborated by that of at least two witnesses, taken separately, to the facts constituting his qualifications, and his compliance with law as to settlement, inhabitancy, improvement, nonalienation, etc. (Rev. Stat., sec. 2263; Form 4–374.)

The exact date of beginning and of ending of each and of every absence from the land should be particularly stated, and the reasons therefor fully given, so as to enable the department to determine as to the sufficiency of the explanation.

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[a] See instructions of Oct. 19, 1929, p. 1149.

The affidavit of claimant, his testimony, and the testimony of his witnesses, and the nonmineral affidavit (where required) must be made at the same time and place and before the same officer.

No other officer than the register or receiver, or the judge or clerk of a court of record of the county or parish in which the land is situated, or a United States commissioner appointed under act of May 28, 1896 (29 Stat. 184), within the land district, in accordance with the act of March 11, 1902 (32 Stat. 63), can take proofs in preemption cases, except that when the land is in an unorganized county the proofs may be made before the same officers in an adjacent county in the same State or Territory. (Sec. 2263, Rev. Stat.; act of June 9, 1880, 21 Stat., 169; circular, March 30, 1886, 4 L. D. 473; act of May 26, 1890, 26 Stat. 121.)

EXTENSION OF TIME FOR PAYMENT

In reference to the joint resolution of September 30, 1890, and act of July 26, 1894, providing therefor, see pages 10 and 209.[b]

LEAVES OF ABSENCE

In reference to statutes allowing leaves of absence in certain cases, see pages 16–18.[b]

ASSIGNEE OF A PREEMPTOR BEFORE PATENT

An assignee of a preemptor before patent has no claim upon the United States for the land nor for the money paid, in event of the failure of the claim and cancellation of the entry for fraud or false swearing by entryman. (Sec. 2262, Rev. Stat.)

HEIRS OF A DECEASED PREEMPTOR

Should a preemptor die without establishing his claim within the period limited by law, the title may be perfected by the executor, administrator, or one of the heirs, by making the requisite proof of settlement and paying for the land, the entry to be made in the name of "the heirs" of the deceased settler, and the patent will be issued accordingly. The legal representatives of the deceased preemptor are entitled to make the entry at any time within the period during which the preemptor would have been entitled to do so had he lived. (Rev. Stat., sec. 2269.)

PREEMPTION CLAIMANTS WHO BECOME INSANE

The rights of a preemption claimant who has become insane may, under act of June 8, 1880, be proved up and his claim perfected by any person duly authorized to act for him during his disability. (21 Stat. 166.)

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[b] The references are to pages of circular of Jan. 25, 1904, not carried in this publication. On pages 10 and 209 of said circular, the instructions relate to extensions of time for payments, authorized by the acts of Sept. 30, 1890 (26 Stat. 684), and July 26, 1894 (28 Stat. 123). On pages 16 to 18, inclusive, the instructions refer to leaves of absence authorized by section 3 of the act of March 2, 1889 (25 Stat. 854), and by the acts of July 1, 1879 (21 Stat. 48), and Jan. 19, 1895 (28 Stat. 634).

Such claim must have been initiated in full compliance with law, by a person who was a citizen or had declared his intention of becoming a citizen, and was in other respects duly qualified.

The party for whose benefit the act shall be invoked must have become insane subsequently to the initiation of his claim.

Claimant must have complied with the law up to the time of becoming insane; and proof of compliance will be required to cover only the period prior to such insanity; but the act will not be construed to cure a failure to comply with the law when the failure occurred prior to such insanity.

The final proof must be made by a party whose authority to act for the insane person during his disability shall be duly certified under seal of the proper probate court.

PRICE OF LAND TO PREEMPTORS

The price of land to a preemptor upon " minimum " lands—i. e., lands not within the limits of a grant to a railroad or some other work of internal improvement—is $1.25 per acre. Within the limits of such grant the price is $2.50 per acre; but settlers, prior to withdrawal, are allowed to enter at $1.25 per acre, provided they shall file notice of their claims and make proof and payment as in other cases. (Rev. Stat., secs. 2257, 2259, 2279, 2281, 2357.)

PRIVATE ENTRIES

PURCHASE AT PRIVATE ENTRY[1]

The sale of lands at public auction was, prior to March 3, 1891, provided for by law (Rev. Stat., secs. 2353, 2357, 2358, 2359, 2360, and 2455), but such sales were prohibited by sections 9 and 10 of the act of that date (26 Stat. L. 1095), save under the exceptions noted in said sections, which read as follows:

> SEC. 9. That hereafter no public lands of the United States, except abandoned military or other reservations, isolated and disconnected fractional tracts authorized to be sold by section twenty-four hundred and fifty-five of the Revised Statutes, and mineral and other lands, the sale of which at public auction has been authorized by acts of Congress of a special nature having local application, shall be sold at public sale.
>
> SEC. 10. That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be disposed of for the benefit of such tribes, and the proceeds thereof to be placed in the Treasury of the United States; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements, except as provided in section five of this act.

The first section of the act of Congress of March 2, 1889 (25 Stat. L. 854), provides that from and after its passage "no public lands of the United States, except those in the State of Missouri, shall be subject to private entry." This relates to the private sale or entry of "offered" lands under sections 2354 and 2357, United States Revised Statutes. No sale at private entry will be admissible under said first section, except in Missouri, in which State all public lands are subject to private sale by section 2 of the act of Congress approved May 18, 1898 (30 Stat. L. 418), but in making purchase under that act the purchaser is required to show the absence of any prior adverse settlement right.

These provisions of said acts of 1889 and 1891, while forbidding the disposal at public auction or private sale of the mass of public lands under the general statutes that formerly provided therefor, do not necessarily prevent the disposal of lands under any act of Congress of a special nature having local application, in such manner as therein provided for, in reference to any specific lands or class of lands, although this may include the disposal thereof at public auction or private sale, as, for example, coal lands at private entry under section 2347, Revised Statutes, circular July 31, 1882, 1 L. D. 687; Osage trust and diminished reserve lands at private entry, last sentence, section 3, act of May 28, 1880, 21 Stat. L. 143; salt spring reserve lands, act of January 12, 1877, 19 Stat. L. 221.

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[1] Extract from circular of Jan. 25, 1904, not carried in this publication.

MINIMUM AND DOUBLE MINIMUM LANDS

No land shall be sold, either at public or private sale, for less than $1.25 per acre, which is therefore called the "minimum price," and lands held for sale at that price are called "minimum lands." (Rev. Stat. 2357.)

The double minimum price established by law is $2.50 per acre, and lands held for sale at that price are called "double minimum lands."

Alternate reserved sections within the limits of railroad grants are double minimum in price (sec. 2357, Rev. Stat.), except such as were put in market at the enchanced price prior to January 1, 1861, and were subject to entry June 15, 1880, all of which were reduced in price to $1.25 per acre by the third section of the act of Congress of June 15, 1880 (21 Stat. L. 237), and except those opposite those portions of railroads not completed on March 2, 1889, which were reduced in price by section 4 of the act of that date (25 Stat. L. 854), or where a different price is provided for in statutes for the disposal of lands under special conditions.

PUBLIC LANDS

CIRCULAR No. 1197 [1]

VACANT PUBLIC LANDS ON JULY 1, 1929

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 1, 1929.

GENERAL INFORMATION

The lands in the thirteen original States, Connecticut, Delaware, Georgia, Maryland, Massachusetts, North Carolina, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, and Virginia, also in Texas, never formed a part of the public domain; their disposition is governed by the State laws, and information concerning same should be sought from the State authorities.

There are no public lands in the States of Kentucky and Tennessee, and none is known to this office remaining undisposed of in the States of Illinois, Indiana, Iowa, Missouri, and Ohio. Small areas remain in the States of Alabama, Kansas, Louisiana, Michigan, Mississippi, Oklahoma, and Wisconsin, in widely scattered tracts, and no descriptive lists thereof are available. Entry of these lands must be made at, and all other related business transacted with, the General Land Office, at Washington, D. C., as there are no district offices in the States named.

Because of the small proportion of surveyed land, no attempt is made to give statistical information concerning the unappropriated Government land in the Territory of Alaska. The total area of the Territory is 378,165,760 acres, of which about 30,000,000 acres are reserved. Of the reserved area, 21,397,521 acres are within the boundaries of national forests. Approximately 1,910,951 acres have been surveyed under the rectangular system and special surveys by metes and bounds.

* * * * * * *

As a rule, the Government is unable to furnish specific information as to soil, topography, and value of the land for different purposes. It may be stated generally, however, that the remaining vacant public lands, not mineral in character, are chiefly valuable for grazing purposes, though some tillable land may be found.

The General Land Office can not advise inquiriers as to the location of the unappropriated tracts in counties where only a few acres are reported as vacant. Information on that subject may be obtained by a careful examination of the records of the district land offices or of this office, which are open for inspection when not in official use.

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[1] This circular as issued in pamphlet form contains tables showing by States, land districts, and counties the area of the unappropriated and unreserved public lands, surveyed and unsurveyed, with a brief statement of their character, on July 1, 1929. The tables have been omitted in this publication. However, a recapitulation thereof is shown on p. 1140.

Township diagrams and plats giving information specified below may be prepared and sold by the registers of the various district land offices at the following prices:

For a township diagram showing entered land only	$1.00
For a township plat showing form of entries, names of claimants, and character of entries	2.00
For a township plat showing form of entries, names of claimants, character of entry, and number	3.00
For a township plat showing form of entries, names of claimants, character of entry, number, and date of filing or entry, together with topography, etc	4.00

The General Land Office records are subject to reasonable inspection for the purpose of obtaining data as to vacant public land, and it will be glad to furnish information as to the status of any particular tract if the legal subdivision, section, township, and range thereof, according to the public-land survey, is given, or, if unsurveyed, by its relative position to adjacent surveyed lands.

The district officers furnish prospective settlers general advice as to lands in their respective districts and literature regarding the methods of making entry. However, personal inspection must be made of the tract to be entered before application is filed, and the settler should exercise great care to satisfy himself as to its character before taking any other step.

Very respectfully,

C. C. MOORE, *Commissioner.*

Approved July 20, 1929.

JOHN H. EDWARDS,
Assistant Secretary.

Recapitulation, by States, of areas shown in omitted tables[2]

	Area, in acres		
	Surveyed	Unsurveyed	Total
Arizona	9,065,367	7,846,000	16,911,367
Arkansas	205,933		205,933
California	14,459,737	5,749,684	20,209,421
Colorado	7,082,181	1,136,694	8,218,875
Florida	7,193	6,662	13,855
Idaho	8,851,615	1,882,805	10,734,420
Minnesota	197,996		197,996
Montana	6,821,824	78,320	6,900,144
Nebraska	28,960		28,960
Nevada	31,318,305	21,915,318	53,233,623
New Mexico	15,117,955	1,164,627	16,282,582
North Dakota	152,113		152,113
Oregon	13,134,730	92,411	13,227,141
South Dakota	402,670		402,670
Utah	13,192,133	11,955,734	25,147,867
Washington	937,701	14,202	951,903
Wyoming	16,218,036	817,501	17,035,537
Grand total	137,194,449	52,659,958	189,854,407

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[2] See footnote, p. 1139.

UNPERFECTED ENTRIES ON JULY 1, 1929

Statement showing number and area of entries of record upon which "final proof" of compliance with the law is not due or has not yet been presented[3]

State and land district	Number of entries	Area, in acres
Arizona, Phoenix	3,441	1,005,575
Arkansas, Little Rock	1,212	103,750
California:		
Los Angeles	4,257	820,271
Sacramento	3,821	884,095
Colorado:		
Denver	4,612	1,542,650
Pueblo	1,725	526,502
Florida, Gainesville	526	39,192
Idaho:		
Blackfoot	5,851	1,743,598
Coeur d'Alene	356	261,403
Minnesota, Cass Lake	726	63,480
Montana:		
Billings	5,041	1,644,495
Great Falls	7,009	1,382,170
Nebraska, Alliance	626	98,910
Nevada, Carson City	1,480	1,553,369
New Mexico:		
Las Cruces	3,717	1,458,580
Santa Fe	4,680	1,790,190
North Dakota, Bismarck	460	61,758
Oregon:		
Lakeview	338	67,700
Roseburg	1,141	104,247
The Dalles	1,917	618,482
South Dakota, Pierre	3,374	902,760
Utah, Salt Lake City	3,311	1,362,097
Washington, Spokane	714	208,212
Wyoming:		
Buffalo	2,844	1,281,115
Cheyenne	4,798	1,582,360
Evanston	575	240,544
Total	68,552	21,347,505

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[3] Such of these entries as may from time to time be canceled of record for failure to submit final proof or for failure to comply with the law will be open to entry by the first qualified applicant, if not withdrawn or reserved.

PUBLICATION OF PROOF NOTICES

[Reported, 2 L. D. 205]

RATES OF ADVERTISING

Department of the Interior,
General Land Office,
Washington, D. C., January 30, 1884.

Commissioner McFarland to Registers United States Land Offices:

It having come to the knowledge of this office that excessive charges are made by the proprietors of newspapers in certain States and Territories for the publication of notices of intention to make final proof under act of March 3, 1879, you are directed hereafter, in designating papers in which such notices shall be published, to designate only such reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by State or Territorial laws for the publication of legal notices.

Approved by Secretary Teller, January 30, 1884.

[Reported, 38 L. D. 131]

INSTRUCTIONS RELATIVE TO PUBLICATION OF FINAL-PROOF NOTICES AND CONCERNING THE DISCRETIONARY AUTHORITY OF REGISTERS IN THE SELECTION OF NEWSPAPERS FOR THAT PURPOSE

Department of the Interior,
General Land Office,
Washington, D. C., August 11, 1909.[1]

Registers and Receivers of United States District Land Offices.

Sirs: This office is in daily receipt of complaints from editors and publishers of newspapers to the effect that their publications are not accorded the patronage which should be bestowed upon them, in accordance with the law and regulations governing the publication of notices of intended final proofs on entries of public lands.

The object of the law requiring publication of such notices is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein, or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the land department. It is unnecessary to state that this object can not be secured by a notice published in a paper which has no meritorious circulation among the people resident in the locality in which the affected land is situated, and that inattention to or disregard of their duty in this behalf on the part of registers will result in the total subversion of the law and the defeat of its purpose and intent. To the end, therefore, that you may be fully instructed concerning your official obligation in the premises, and that you may be urged to an alert and diligent performance of the duty which the law imposes upon you, your attention is directed to the several rules now to be stated and which should govern and control you in the discharge of your official obligation:

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[1] Amended by circular of Apr. 4, 1914 (No. 310), p. 1148. See instructions of Oct. 19, 1929, p. 1149.

First. A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed a qualified medium of notice unless it shall have been continuously published during an unbroken period of six months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (secs 427 to 437, inclusive, Postal Laws and Regulations), a privilege available to all newspapers having a legitimate list of subscribers and a known place of publication.

Second. The notice must in all cases be published in the newspaper which may be printed and issued at a place nearest to the lands which the notice affects. By the word "nearest" as here used it is not intended that geographical proximity shall be measured on an air line drawn between the land and the place of publication, but by the length of the shortest and principally traveled thoroughfare between such places, being the highway ordinarily used and employed for travel by vehicles of any kind. But this qualification shall not be intended as authorizing any manifest perversion of the spirit of the rule, but simply to dispense with any strict rule based on geographical distance.

Third. It is not necessary that the newspaper nominated as the medium of such notice shall be published in the same county as that in which the land lies, or even in the same land district. On the contrary, a newspaper published in an adjoining county, if its place of publication is nearer to the land than that of any other newspaper, must be designated as the agency of publication, if it is also qualified by reason of its general circulation in the vicinity of the affected lands.

Fourth. The law invests registers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred. It follows that a register's action in the exercise of such discretion is subject to review by this office in any case where it is sufficiently alleged that the discretion has been abused, meaning thereby that it has been exercised in a manner perversive of the object of the law in requiring such notices to be published. This power of review will ordinarily be exercised and made effective in a proper case by holding the final proof to have been preceded by insufficient notice; but it may be resorted to and exercised, in any case in which it may be shown that a register is persistently designating a manifestly inefficient medium of notice, by forbidding the further publication of notices in such a newspaper until it shall have acquired and sufficiently established its possession of the requisite qualifications. In other words, where it has once been determined that a newspaper is not a competent medium of notice, it is within the power of this office to forbid the continued selection of that newspaper as the means of publication without awaiting repeated abuses of discretion on the part of a register and a determination in each separate instance that the notice was ineffectually published. This course of action will, therefore, be pursued whenever it is shown that a register is bestowing his patronage upon an alleged newspaper which is not entitled to that character, being merely a private advertising agency or published for some special purpose and not as a general disseminator of news, or where such paper has no actual bona fide or reasonably meritorious circulation, or is not in fact published at its pretended place of publication, but at some other place.

Fifth. Where a register acts in the reasonable and not manifestly unfair and improper exercise of his discretion his decision will not be interfered with or disturbed by this office. The department can not and will not undertake to weigh and nicely calculate the relative efficiency of two or more newspapers published in the same place and alike possessing and enjoying an established character and general circulation; nor will it, as between two papers published at different places, permit any slight and unimportant advantage in the matter of geographical proximity, period of publication, or extent of circulation, possessed by one of such papers over the other, to serve as a sufficient reason for disapproval of the register's conclusion as to which one of such newspapers should be designated as the means of publication.

Sixth. It is earnestly desired that you shall severally be at all times careful in your observance of and adherence to the rules which have been here stated and prescribed for your governance, to the end that the new numerous and urgent complaints of alleged discrimination, and charges to the effect that the object of the law is not observed in the choice of newspapers for the publication of final-proof notices, may be at least greatly diminished in number, as well as to the further end that such as may be received shall be without fundation of fact or in law.

Seventh. Persons seeking to establish their right to a legal title to any public lands are not authorized to interfere with the discretion of the register in the choice of a newspaper in which to publish notice of their claims; nor will any designation of a newspaper made by a register, in the reasonable exercise of that discretion, be disturbed on the ground that the claimant recommended another newspaper. All other conditions being equal, it will be entirely proper to accord favorable consideration to a claimant's nomination of a newspaper. though acceptance of such a nomination will not be enjoined upon you.

Eighth. None of the rules herein stated respecting the designation of the newspaper are intended to apply to, or govern, publication of notice concerning proof proposed to be offered in support of an application for the purchase of lands chiefly valuable for their timber or stone, under the act of Congress of June 3, 1878 (20 Stats. 89), as extended by the act of Congress of August 4, 1892 (27 Stats. 348), nor to the purchase of Alaskan coal lands under the act of Congress of April 28, 1904 (33 Stats. 525). Publication of such notices must be procured by the applicants, in newspapers selected by them, but this privilege does not exempt them from the obligation to select a newspaper published nearest to the lands to which the application relates, and such paper must be in all other respects a competent medium of notice, in accordance with the principles which have been stated. You will give to all applicants under this act due counsel and instruction concerning the duty imposed upon them in respect of publication of notice, to the end that they may not ignorantly err in the choice of newspapers through which to communicate such notice.

PROCEDURE IN CASES OF COMPLAINTS

Ninth. No appeal will lie from the action of the register in refusing to name any particular newspaper as an agency for the publication of notices concerning claims to public lands. But any editor or proprietor of a newspaper who believes and desires to charge that a notice of proof in support of any claim to public land has been published in a paper disqualified by the rules and principles herein stated, to serve as the medium of such notice, may file in the district land office from which such notice emanated a written and verified protest against the acceptance of the proof submitted in accordance with such notice. Such protest should set forth all material and essential facts within the knowledge of the protestant, or of which he has reliable information and which he believes to be true, and which, if duly established by proof, would require a determination that the newspaper in which the notice was published was and is not a reputable and established publication, printed, in good faith, for the diffusion of local and general news; or that it is and was not the paper published nearest to the land affected by said notice, and that there is another newspaper published at a place nearer to said lands, equally well qualified in all respects to convey notice of the claim thereto asserted; or any other cause of disqualification expressed and defined in and by the foregoing several rules.

Tenth. Any such protest must be accompanied by copies of at least three successive editions of the paper against whose efficiency as a means of notice the protest is directed, and by as many like copies of the paper published by protestant, and alleged to have been a more efficient agency of notice than was the paper actually chosen. It should, in addition to other facts hereby made essential, disclose the relative number of actual paying subscribers supporting the said two newspapers; the number of papers actually distributed in the county in which said papers are published and in the county in which the land is situated; and the number of papers mailed to bona fide subscribers at the post office nearest to the land to which such notice relates. It should state the length of time during which each of said newspapers has been actually and continuously published, immediately preceding the date of the protest; and, if either of said papers has been denied, or has never applied for, entry as second-class matter in the post office at the place of publication, that fact should be stated.

Eleventh. Where any protest has been filed in the manner herein prescribed it shall be the duty of the register and receiver to immediately consider same and to proceed thereon as in other cases of protests against final proofs. If they should conclude that the facts stated in the protest are insufficient to warrant an order for a hearing, they will render decision to that effect and duly notify the protestant thereof, at the same time advising him of his right to prosecute an appeal to this office, in the manner and within the time prescribed by the rules of practice. After the expiration of the period during which an appeal may be prosecuted, they will, if no such appeal be filed, forward the protest and accompanying exhibits to this office, with their decision thereon, as in cases of unappealed contests, together with a separate report by the register concerning the facts within his knowledge, and bearing, in a material manner, on the merits of the question presented by the protest.

Twelfth. In all cases where no appeal is prosecuted from a decision by the register and receiver dismissing a protest, that decision will be considered final as to the facts; and acquiescence therein by this office will be refused only when it is manifest that it was error to determine that no proper ground of protest was sufficiently alleged.

Thirteenth. The law imposes upon registers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication. Registers should accordingly exercise the utmost care in the examination of such notices and in the comparison thereof with the records of their offices, to the end that they may not go to the printer containing any erroneous description of the entered land, or designating an officer not authorized to receive the proof, or that they shall not be for any other reason insufficient. It is equally important that a notice correct in all of these particulars shall not be published in a newspaper manifestly disqualified as a means of publication and clearly incapable of bringing the notice to the attention of the people dwelling in the vicinity of the lands to which it relates.[2]

Neglect of the duty above defined, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the register by whom the publication was procured will be required to effect the necessary republication at his own proper expense. If an error is committed by the printer of the paper in which the notice appears, the register may require such printer to correct his error by publishing the notice anew for the necessary length of time, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.[2]

S. V. PROUDFIT,
Acting Commissioner.

Approved, August 11, 1909.

JESSE E. WILSON,
Acting Secretary.

(Laws and extracts from former regulations omitted.)

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[2] See revision, p. 1148.

[Reported, 43 L. D. 216]

CIRCULAR No. 310

AMENDMENT TO CIRCULAR OF AUGUST 11, 1909, RELATING TO PUBLICATION OF FINAL-PROOF NOTICES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 4, 1914.

To Registers and Receivers and Chiefs of Field Divisions.

SIRS: The Instructions of August 11, 1909 (38 L. D. 131), relative to publication of final-proof notices and concerning the discretionary authority of registers in the selection of newspapers for that purpose, are hereby amended by the insertion of the following after paragraph twelfth thereof:

Thirteenth. Any person having knowledge of the failure of a register to designate the proper newspaper for the publication of notice of final proof may file with the chief of the field division in which the land district is situated a corroborated affidavit fully setting forth all the facts and circumstances.

Fourteenth. On receipt of such affidavit, the chief of field division shall cause a prompt investigation to be made and submit full report to the Commissioner of the General Land Office, who shall then take such action as the facts may warrant.

Fifteenth. The law imposes upon registers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication. Registers should accordingly exercise the utmost care in the examination of such notices and in the comparison thereof with the records of their offices, to the end that they may not go to the printer containing any erroneous description of the entered land, or designating an officer not authorized to receive the proof, or that they shall not be for any other reason insufficient.

It is equally important that a notice correct in all of these particulars shall not be published in a newspaper manifestly disqualified as a means of publication and clearly incapable of bringing the notice to the attention of the people dwelling in the vicinity of the lands to which it relates.

Neglect of the duty above defined, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the register by whom the publication was procured will be required to effect the necessary republication at his own proper expense. If an error is committed by the printer of the paper in which the notice appears, the register may require such printer to correct his error by publishing the notice anew for the necessary length of time, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

Yours respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

Circular No. 1177

ABBREVIATIONS OF DESCRIPTIONS REQUIRED IN PUBLICATION OF FINAL-PROOF NOTICES

Department of the Interior,
General Land Office,
Washington, December 4, 1928.

Registers, United States Land Offices.

Gentlemen: In examining newspaper clippings attached to publishers' affidavits in connection with public land cases it is found that oftentimes the descriptions of legal subdivisions are written out in full instead of being abbreviated, thereby increasing the space occupied and also the cost for the publication.

Hereafter in your notice for publication you will use the abbreviations for the descriptions of legal subdivisions such as NE. ¼ instead of northeast quarter, etc., and instruct all the publishers within your jurisdiction to closely follow the copy.

Very respectfully,

William Spry, *Commissioner.*

NOTICES TO BE PUBLISHED WEEKLY ONLY

Department of the Interior,
Washington, October 19, 1929.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: Attention has been directed to the fact that in many cases it is necessary for registers of local offices to designate a daily paper in which to publish the notices of intention to submit final proof required to be given by homestead and desert-land entrymen as well as the notices of location of scrips, warrants, certificates, and lieu selections, and other cases.

The present regulations require that if the register designate a daily paper the publication must be inserted in 30 consecutive issues; if daily except Sunday, in 26; if weekly, in 5, and if semiweekly, in 9 consecutive issues.

The expense of publishing such notices in either 26 or 30 issues of a daily paper is often prohibitive, and the department is of opinion that the object of publication of such notices can be accomplished by a less number of insertions. Therefore, the regulations in all cases where the law does not specifically otherwise direct are amended to provide that if the register designate a daily paper the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues, and if semiweekly, in either issue for five consecutive weeks.

These instructions supersede those of August 8, 1929.

Very truly yours,

John H. Edwards,
Assistant Secretary.

RAILROAD, WAGON ROAD, CANAL, ETC., LAND GRANTS

[Reported, 6 L. D. 276]

ADJUSTMENT OF RAILROAD GRANTS—ACT OF MARCH 3, 1887[1]

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, November 22, 1887.

Secretary Lamar to Acting Commissioner Stockslager:

The act of March 3, 1887, authorizes and directs the Secretary of the Interior to immediately adjust in accordance with the decisions of the Supreme Court each of the railroad land grants made by Congress to aid in the construction of railroads, and heretofore unadjusted.

The second section of said act provides—

> That if it shall appear, upon the completion of such adjustments respectfully (respectively), or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall be made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

The provision contained in this section confers no greater power upon the Secretary of the Interior than he possessed before the passage of that act, and which from time to time has been exercised by that official in recommending to the Attorney General that suits be brought to cancel patents appearing to have been erroneously certified or patented for the benefit of any railroad company.

The purpose of the act was to make that mandatory which before rested in the discretion of the Secretary in the exercise of his authority over the public lands. Heretofore the Secretary of the Interior might recommend and request the Attorney General to institute suits for the cancellation of patents, which in his judgment were erroneously issued for the benefit of any railroad company under its grants, and the Attorney General in the exercise of his authority might grant or refuse such request as in his judgment might seem proper, but, under the act above referred to, whenever it shall appear upon the completion of the adjustment of any railroad land grant, or sooner, that any lands have been erroneously certified or patented for the benefit of said company, it is made the imperative duty of the Secretary of the Interior to demand of said company a relinquishment or reconveyance to the United States of all such lands, and if the company neglects or fails to reconvey the same, it shall thereupon be the duty of the Attorney General to commence and prosecute in the proper courts necessary proceedings to cancel the patents for said lands, and to restore the title thereof to the United States.

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[1] Modified by instructions of Feb. 21, 1888, p. 1155, and instructions of Feb. 13, 1889, p. 1156.

Therefore, if in the adjustment of the grant of any road it should appear from the records in your office that any lands within either the granted or indemnity limits of such road have been erroneously certified or patented for the benefit of such company, either from an improper adjustment of the limits of said grant, or from the erroneous cancellation of any filing or entry, or from any cause whatever, you will report such facts to the department for action thereon, stating fully and specifically the grounds upon which it is supposed such tracts were erroneously certified or patented, and whether said tracts are within the granted or indemnity limits of said road.

The third section of said act provides—

> That if, in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any bona fide settler has been erroneously canceled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also*, That he did not voluntarily abandon said original entry: *And provided further*, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public lands laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

This section does not embrace any lands that have been certified or patented to the company, but has reference solely to lands, the right and claim to which has heretofore been adjudicated in favor of the company as against the right of a settler upon said lands, and which are still under the control and jurisdiction of the department. The object and purpose of this section is to correct all decisions made by the department or the General Land Office where it shall appear in the examination of any land grant heretofore unadjusted that the homestead or preemption entry of a bona fide settler was erroneously canceled. In such case a final decision of a former or the present Secretary is not only no longer a bar to the further consideration of the question decided, but it is made the duty of the Secretary to readjudicate the case, notwithstanding the former decision, whenever it appears that the preemption or homestead entry of any bona fide settler has been erroneously canceled on account of any railroad grant or of withdrawal of public lands from market.

In the adjustment of every grant to aid in the construction of railroads, you will make report upon all preemption and homestead entries of bona fide settlers that may in your judgment appear from the records of your office to have been erroneously canceled, either because the land is within the limits of the railroad grant, or because it had been withdrawn for indemnity purposes for said road, provided the right to the tract has been decided in favor of the company, and forward said report to the department for consideration and action thereon, stating fully and specifically as to each particular tract, the grounds upon which you may determine that said preemption and homestead entries were erroneously canceled, and the right to the land erroneously decided in favor of the company; and upon filing said report you shall cause notice thereof to be given to both parties, advising them that said case will be held by this department for 30 days before action, during which time they can make such showing as they may desire.

If in such report you should determine that the preemption or homestead entry of any bona fide settler has been erroneously canceled, and the right to the land adjudged in favor of the railroad, and your decision thereon shall be sustained by the department, after due notice the land will then be subject to disposal as provided for in said section; that is, the settler whose entry was erroneously canceled will be notified of his right to make application to be reinstated in all his rights, and if such settler shall make such application within a reasonable time, to be fixed by the Secretary of the Interior in such notice, he shall be reinstated in all his rights; provided, that he shows affirmatively that he has not located another claim or made an entry in lieu of the one so erroneously canceled, and that he did not voluntarily abandon said original entry. If said settler should fail to make application within the time required, and to show that he has not located another claim or made an entry in lieu of the one so erroneously canceled, and that he did not voluntarily abandon said original entry, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

The bona fide purchasers here referred to are those who, without knowledge of wrong or error, have purchased from the railroad company lands which had been previously entered by the preemption or homestead settler, whose entry has been erroneously canceled as described in the first clause of the third section, and which land the preemption or homestead settler did not elect to claim after recovery by the proceedings prescribed by the second section of the act.

As to the lands which have been erroneously certified or patented to the company (being the lands referred to in the second section), the fourth section of the act provides for the disposal of such of those lands as may have been sold by the company to citizens of the United States or persons who have declared their intention to become such citizens upon the following conditions.

After said lands shall have been reconveyed to the Government, or the title to the same recovered, the class of persons above referred to, so purchasing in good faith, their heirs or assigns, shall be entitled to the land so purchased, upon making proof of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted; and patent shall issue to such persons, which shall relate back to the original certification or patenting. The section then provides that the Secretary of the Interior shall demand of the company payment for said lands, of an amount equal to the Government price of similar lands; and in case of the neglect or refusal of the company to make payment thereof within 90 days after demand, the Attorney General shall cause suits to be brought against the company for said amount. Under the act the purchaser of such lands from the company may recover from the company the purchase money paid by him, less the amount paid by the company to the United States.

A mortgage or pledge of said lands by the company is not a sale, within the meaning of the act.

The object of this section is to confirm to the purchaser the title to the land therein referred to, upon making proof of such purchase, and that the purchaser has the qualifications required by the act, without requiring of the purchaser any further payment to the Government of the purchase price of said land.

The fifth section of said act reads as follows:

> There where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: *Provided*, that all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the preemption or homestead laws of the United States, and whose claims and occupation have not since been voluntarily abandoned, as to which excepted lands the said preemption and homestead claimants shall be permitted to perfect their proofs and entries and to receive patents therefor: *Provided further*, that this section shall not apply to lands settled upon subsequent to the first day of December, 1882, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

Under this section, when the company has sold to citizens of the United States or persons who have declared their intention to become such citizens, the numbered sections prescribed in the grant, and coterminous with the constructed portions of the road, within either the granted or indemnity limits, and which upon the adjustment of the grant are shown to be excepted from the operation of the grant, it shall be lawful for such purchasers—if their purchase is bona fide—to purchase said land from the Government by payment of the Government price for like lands, unless said lands were at the date of purchase in the bona fide occupation of adverse claimants under the preemption or homestead laws, in which case the preemptor or homestead claimant may be permitted to perfect his proof, unless he has since voluntarily abandoned the land.

Under the last proviso of said section, however, if a settlement was made on said lands subsequent to December 1, 1882, by persons claiming the same under the settlement laws of the United States, it will defeat the right of the purchaser whether said purchase was made prior to or subsequent to December 1, 1882, and the settler will be allowed to prove up for said lands as in other like cases.

The sixth section provides that when any such lands have been sold and conveyed as the property of the company, for State and county taxes, and the grant to the company has been thereafter forfeited, the purchasers at such sale shall have the preference right for one year from the date of the act in which to purchase said lands from the United States, by paying the Government price for said lands, provided said lands were not, previous to or at the time of the taking effect of such grant, in the possession of or subject to the right of an actual settler.

The seventh section provides—

> That no more lands shall be certified or conveyed to any State or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which such State, corporation, or individual would be rightfully entitled.

You will proceed at once, and with as much dispatch as possible, to adjust all land grants to aid in the construction of railroads, under the provisions of the act above referred to, and in accordance with the directions herein given. You will inform the department at once when you commence the adjustment of any grant, in order that cases pending in the department involving the rights of the road under such grant may be taken up and considered.

[Reported, 6 L. D. 544]

RAILROAD GRANT—DEMAND UNDER THE ACT OF MARCH 3, 1887

Department of the Interior,
Washington, February 21, 1888.

Secretary Vilas to Acting Commissioner Stockslager:

By letter of January 10, 1888, you transmitted two lists of lands stated to have been erroneously certified to the State of Minnesota for the benefit of the Winona & St. Peter and St. Paul & Sioux City Railroad Cos. under the grant of lands to that State, for railroad purposes, made March 3, 1857 (11 Stats. 195).

List A embraces lands contained in the odd-numbered sections, and which were selected and certified as indemnity lands for said roads, or one of them.

List B is of lands contained in the even sections along the line of said roads, and were certified in lieu of lands claimed to have been relinquished by said roads, or one of them, under the provisions of the act of June 22, 1874 (18 Stats. 194).

These lists are transmitted for my action under the provisions of the act of March 3, 1887 (24 Stats. 556).

That act requires the Secretary to adjust "in accordance with the decisions of the Supreme Court" each of the railroad land grants made by Congress, and provides further that if on the completion of the adjustment, or sooner, it should appear that any lands had been erroneously certified to a company demand should be made for a reconveyance of the same to the United States; and upon failure of said company to make such reconveyance within 90 days, then it becomes the duty of the Attorney General to institute and prosecute proper legal proceedings to restore the title of said lands to the United States.

Under the language of this act it may be a serious question whether, when the Secretary has once made such a demand, his jurisdiction in the premises is not ended, and whether he can do anything further than transmit the papers to the Attorney General should the company fail to comply with the demand.

Ordinarily when papers are transmitted to the Attorney General by this department for the purpose of asserting through the courts the supposed rights of the Government, such transmission is accompanied by a recommendation that suit be brought, if upon investigation the Attorney General should be of the opinion that it can be successfully maintained.

But under the language of this act all discretion seems to be taken away from that officer, and it apparently becomes his imperative duty to bring such suit forthwith.

Cases will arise, doubtless, in the adjustment of these railroad grants when it will appear from your records that lands have been erroneously certified to some company, yet if the true facts were known or some explanation made the error would disappear and the Secretary would not feel himself justified to either demand the restoration of said land or recommend suit to restore the same. Yet, if such knowledge came only after demand, it may be well doubted whether either of the officers named would have any authority to reconsider his action or in any way stop the proceedings directed by the law.

Under these circumstances, it seems to me, great circumspection should be exercised in the premises and such means used as are within control to ascertain all the facts bearing upon the certification or patenting in question. And I can think of no better means of aiding in said ascertainment than to allow the company in question to be heard before, what appears to be, the final action of this department is taken and demand made for the return of the land.

You will therefore, on receipt hereof, notify the Winona & St. Peter and St. Paul & Sioux City Railroad Cos. that, it appearing from your records said lands have been erroneously certified for their use, specifying the lands referred to, said companies will be allowed 30 days after service of notice within which to show cause, in writing, before you why proceedings should not be taken in accordance with the provisions of said act of March 3, 1887, to secure the restoration of said lands to the Government. After the expiration of the time fixed in such notice, you will then certify up such lists, and with them any showing made by the companies interested, with your opinion thereon.

Hereafter similar action will be taken by your office in all like cases, prior to transmission of the same to this department. To this extent the circular of November 22, 1887 (6 L. D. 276), is modified.

[Reported, 8 L. D., 348]

ADJUSTMENT OF RAILROAD GRANTS—ACT OF MARCH 3, 1887

Department of the Interior,
General Land Office,
Washington, D. C., February 13, 1889.

Registers and Receivers, United States Land Offices.

Gentlemen: The following instructions under the act of Congress approved March 3, 1887 (24 Stat. 556), are forwarded for your guidance.

THE FIRST SECTION directs that all railroad land grants not adjusted heretofore shall be adjusted immediately—that is, without unnecessary delay. The duties thereunder pertain to the General Land Office and Department of the Interior.

THE SECOND SECTION provides for the recovery by the United States of title to lands which from any cause have been erroneously certified or patented "to or for the use or benefit of any company" on account of a railroad grant, whenever the fact may be ascertained that a certificate or patent has been erroneously issued, and prescribes the duties of the Secretary of the Interior and Attorney General in connection therewith.

THE THIRD SECTION provides—

> That, if in the adjustment of said grants, it shall appear that the homestead or preëmption entry of any bona fide settler has been erroneously canceled on account of any railroad grant, or the withdrawal of public lands from market, such settler, upon application, shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided also*, That he did not voluntarily abandon said original entry: *And provided further*, That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed land, if any, and if there be no such purchasers then to bona fide settlers residing thereon.

Three classes of persons are provided for under this section.

> First. Bona fide settlers whose homestead or preëmption entries have been erroneously canceled on account of a railroad grant or withdrawal.
>
> Second. Bona fide purchasers of such unclaimed lands.
>
> Third. Bona fide settlers residing thereon.
>
> The rights of the several classes to the lands referred to in the section are successive in the order stated in the section. The first in right is the homestead or preëmption settler whose entry has been wrongfully canceled. If he elects to assert his right, and has not been disqualified by locating another claim or making another entry in lieu of the entry erroneously canceled, his right is absolute, and the successive rights of the remaining two classes can not attach if he lawfully asserts his claim. If he fail to claim the land, or is disqualified under the act, the second class of persons, who are the bona fide purchasers of the land unclaimed by him, attach, and have precedence over the third class The bona fide purchasers here referred to are those who, without knowledge of wrong or error, have purchased from the railroad company lands which have been previously entered by a preëmption or homestead settler, whose entry has been erroneously canceled, as described in the first clause of the third section, and which land the preëmption or homestead settler did not elect to claim after the recovery by the proceedings prescribed by the second section of the act.—Attorney General's Opinion, November 17, 1887 (6 L. D. 272).

Parties of the first class desiring to avail themselves of the benefits of this section should present their applications without unnecessary delay, after notice of intention as required by the act of March 3, 1879, in preëmption and homestead cases. The application must in every instance be accompanied by proof showing:

1. The facts respecting the date of the applicant's settlement, duration of residence, and value of improvements upon the public land.

2. Whether he has located any other claim under any of the laws of the United States authorizing settlements upon public lands.

3. Whether he has abandoned the land embraced in his canceled entry or filing; if so, the causes which led to the abandonment.

4. Whether any other person or persons are residing upon the land.

5. That such persons as may be so residing upon the land have been notified of the intention of the claimant to apply for the reinstatement of his filing or entry, and the manner of giving such notice must be shown.

Should an adverse claimant appear to dispute or contest the right of reinstatement proceedings will be had in accordance with rules of practice as in ordinary contests.

While the act contains no provision relative to persons whose entries or filings have not been canceled, but whose lands have been certified or patented on account of railroad grants, it follows as a matter of course, that their rights should be protected, and the mode of procedure in such cases will be the same as in the cases where cancellation has been made, except that the parties should apply to make final proof and payment instead of for reinstatement of entry; but in such case proceedings will be deferred until the title has been restored to the United States as provided by section two of the act. The instructions of November 22, 1887 (6 L. D. 276), under this section are hereby modified in accordance with the foregoing.

Proceedings on applications by parties of the second class will be governed by instructions under the fourth section.

Applicants of the third class will be required to submit evidence, in addition to that relating to their own settlement or claims, showing whether there are persons of the first or second class residing upon, in possession of, or claiming lands.

The fourth section relates to all lands which have been erroneously certified or patented on account of railroad grants, except those mentioned in the third section, and by the grantee company sold to citizens or to persons who have declared their intention to become citizens of the United States; and provides that after the title to such lands has been restored to the United States as contemplated by the second section of the act, persons who have purchased such land in good faith, their heirs or assigns, shall be entitled to the lands upon making proof at the proper land office, whereupon patents shall issue relating back to the date of the original certification or patenting, and the grantee company will be required to pay the United States for such lands at the price at which other similar lands are legally held by the Government.

The purchaser from the company is not debarred by the act from recovering from the company the amount of purchase money paid by him less the amount paid by the company to the United States for the land.

A mortgage or pledge of such lands is not a sale within the intention of the act.

No forfeiture is declared by this act against any land grant for conditions broken (and no entry is authorized for lands legally within such grant), but no rights of the United States on account of breach of conditions are waived by the act.

An applicant for land under this section will be required to publish notice of intention to make proof as in preemption and homestead cases, and the proof must show—

1. That he is, or has declared his intention to become, a citizen of the United States.

2. That he is a bona fide purchaser from the company or some person claiming title under it, and the character of the instrument conveying the land to him.

3. The amount of purchase money paid to the company.

4. What part, if any, of the purchase money paid to the company has been refunded to him or any person acting as his agent.

5. Whether he has instituted proceedings against the company for the recovery of any portion of the purchase money; if so, for what portion.

6. The value and character of the improvements, if any, made or acquired by him upon the land.

7. Whether there is any person of the first class under the third section entitled to the right of entry under the preemption or homestead laws.

Upon the submission of satisfactory proof as prescribed above, the register will issue certificate, in duplicate—numbered in the regular cash series—with annotations thereon showing that the entry is allowed without payment under the fourth section of the act of March 3, 1887 (24 Stat. 556).

The fifth section relates to lands within the limits of railroad grants, coterminous with constructed portions of the lines of road, not conveyed on account of, but excepted from, the grants.

Under this section, when the company has sold to citizens of the United States or persons who have declared their intention to become such citizens, the numbered sections prescribed in the grant and coterminous with the constructed portions of the road, within either the granted or indemnity limits, and which upon the adjustment of the grant are shown to be excepted from the operation of the grant, it shall be lawful for such purchasers (if their purchases are bona fide) to purchase said land from the Government by payment of the Government price for like lands, unless said lands were at the date of purchase in the bona fide occupancy of adverse claimants under the preemption or homestead laws, in which case the preemptor or homestead claimant may be permitted to perfect his proof unless he has since voluntarily abandoned the land.

Under the last proviso of said section, however, if a settlement was made on said lands subsequent to December 1, 1882, by persons claiming the same under the settlement laws of the United States, it will defeat the right of the purchaser, whether said purchase was made prior or subsequent to December 1, 1882, and the settler will be allowed to prove up for said lands as in other like cases.

Applicants to purchase under this section will be required to publish notice of intention as directed by instructions under the third and fourth sections, and the proof must show—

1. That the tract was of the numbered sections prescribed by the grant.

2. That it was coterminous with constructed parts of said road.

3. That it was sold by the company to the applicant, or one under whom he claims, as a part of its grant.

4. That it was excepted from the operation of the grant.

5. That at the date of said sale it was not in the bona fide occupancy of adverse claimants under the preemption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned.

6. That it has not been settled upon subsequent to the 1st day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws.

7. That the applicant is, or has declared his intention to become, a citizen of the United States.

8. And that he, or one under whom he claims, was a bona fide purchaser of the land from the company.

The proof upon these points being found satisfactory, the entry will be allowed and the usual cash certificate and receipts will be issued thereon reciting the fact that the entry is in accordance with the fifth section of the act of March 3, 1887 (24 Stat. 556).

No entry will be allowed under this section until it shall have been finally determined by this department that the land was excepted from the grant.

The sixth section provides that when any such lands have been sold and conveyed as the property of the company for State and county taxes, and the grant to the company has been thereafter forfeited, the purchaser at such sale shall have the preference right for one year from the date of this act, and no longer, in which to purchase said lands from the United States by paying the Government price for said lands, provided said lands were not previous to or at the time of the taking effect of such grant in the possession of or subject to the right of an actual settler.

The period prescribed by the statute for presenting applications under this section having expired, instructions as to methods of procedure are deemed unnecessary.

The seventh section authorizes the Secretary of the Interior to refuse to certify or convey lands on account of any railroad grant where it shall appear to him that to do otherwise would give to the grantee more lands than the granting act contemplated giving.

Very respectfully,

S. M. Stockslager,
Commissioner.

Approved.

Wm. F. Vilas, *Secretary.*

[Reported, 28 L. D. 103]

REGULATIONS UNDER THE ACT OF JULY 1, 1898 (30 STAT. 597, 620), TO FACILITATE THE ADJUSTMENT BY THE LAND DEPARTMENT OF CONFLICTING CLAIMS TO LANDS WITHIN THE LIMITS OF THE GRANT TO THE NORTHERN PACIFIC RAILROAD CO.

Department of the Interior,
General Land Office,
Washington, D. C., February 14, 1899.[a]

The provision in the act of July 1, 1898, is as follows:

> That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or the indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the

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[a] See supplemental instruction of June 3, 1899, p. 1174.

United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler, or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrending the lands before mentioned, and such patents shall not issue until after the survey: *Provided, however,* That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions; and all right, title, and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further,* That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal: *And provided further,* That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: *And provided further,* That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States, but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled to under laws heretofore enacted: *And provided further,* That all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron, or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which such railroad grant extends, and make proof therefor as in other cases provided; and in making such proof, credit shall be given for the period of their bona fide residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them or hold his claim and allow the said railroad company to do so under the terms of this act.

A. WHO ARE THE BENEFICIARIES UNDER THIS ACT? FROM WHOM MAY RELINQUISHMENTS BE RECEIVED, AND BY WHOM MAY THE LIEU SELECTIONS BE MADE?

1. The act designates a class of beneficiaries whose status is that of claimants adverse to the Northern Pacific Railroad Co., or its successor in interest, and in doing so different words and terms of description are used in different portions of the act; but, considering the act in its entirety, and giving due recognition to each provision therein, this class embraces any qualified person who, prior to January 1, 1898, by settlement, entry, or purchase, initiated in good faith a claim to lands of the description given, "under color of title or claim of right under any law of the United States or any ruling of the Interior Department," and who is still maintaining such claim conformably to such law or ruling.

This class also embraces the heirs of the claimant in all instances where he has died, and his claim or entry or right to perfect title thereunder is one which under the public land laws descends or passes to his heirs. It further embraces the assigns of the claimant in all instances where, in the absence of an inhibition against so doing, he has sold or transferred his claim or entry, or the right to perfect title thereunder, to one who is not by law disqualified from succeeding to such claim or entry, or the right to perfect title in himself thereunder.

2. The act designates as one beneficiary the Northern Pacific Railroad Co., or its lawful successor in interest, subject, however, to the following proviso:

> * * * *And provided further,* That nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the said Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act. * * *

An examination of a certified copy of the record in the foreclosure proceedings referred to, and a consideration of the opinion of the Attorney General dated February 6, 1897 (21 Opinions of Attorneys General, 486), show that the Northern Pacific Railway Co. is such lawful successor in interest as to all lands within the limits of the grant, excepting those situated in the State of Minnesota and in the State of North Dakota east of the Missouri River. As to all lands within the limits of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, the Northern Pacific Railroad Co. has no successor in interest, but its property and affairs are now in the hands of receivers, appointed and acting under the authority and direction of certain circuit courts of the United States.

Within the limits of that portion of the grant to which the Northern Pacific Railway Co. is thus the lawful successor in interest, relinquishments should be executed, and selections in lieu thereof should be made by said railway company. Within the limits of that portion of the grant situated in the State of Minnesota and in the State of North Dakota east of the Missouri River, relinquishments should be executed by the Northern Pacific Railroad Co., and also by the receivers thereof, and selections in lieu thereof should be made by such receivers on behalf of the railroad company; the receivers, in executing relinquishments and in making lieu selections, to act under proper authorization first obtained from the proper court.

3. In these regulations the claimant adverse to the railroad company or its successor in interest will, for convenience, be spoken of as the individual claimant, and his claim to the land in contest or controversy will be spoken of as an individual claim; the railroad company or its successor in interest, as the case may be, will be spoken of as the railroad claimant, and its claim to the land in contest or controversy will be spoken of as the railroad claim.

B. WHAT LANDS ARE SUBJECT TO RELINQUISHMENT SO AS TO BECOME THE BASES FOR LIEU SELECTIONS?

4. To authorize a lieu selection the relinquishment must be of the whole or some legal subdivision of an odd-numbered section in either the primary or indemnity limits of the land grant to the Northern Pacific Railroad Co., which is the subject of conflicting claims asserted by an individual claimant upon the one part and by the railroad claimant upon the other part.

5. A relinquishment can in no event be made until after the land claimed has become identified by the public surveys.

6. The act makes special provision for instances where, after January 1, 1898, a qualified person in good faith makes settlement, with a view to homestead entry, upon unsurveyed lands within the primary limits of said grant, which upon survey are found to be within an odd-numbered section to which the right of the railroad company has attached by the definite location of its line of road. The purpose of this provision is to afford relief to those who make such settlement before the identification by survey of the lands to which the railroad claimant is entitled.

Such settlement claim must be continued and the right of the settler asserted after survey by an application at the local land office to make homestead entry of the lands settled upon, accompanied by proof of such settlement, and the continued maintenance of the claim. These claimants are not accorded the privilege of taking other lands in lieu of those settled upon; but if the proof submitted is deemed satisfactory the railroad claimant will be requested to relinquish the lands embraced in said claims and to take other lands. All the provisions of these regulations are applicable to these lands excepting those pertaining to relinquishments by individual claimants.

7. Since the issuance of patent terminates the jurisdiction of the Land Department over the lands patented, and exhausts its power to examine and decide upon claims to such lands, and since this act manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department, it follows that its provisions are confined to unpatented lands, and that lands which have been patented are not the subject of relinquishment and can not be made the basis of a lieu selection under this act; but the point to which the opposing claims have been prosecuted, or the extent to which they have been considered by the Land Department, is not material if they be otherwise within the terms of the act, and the lands remain unpatented.

C. WHAT ARE THE CLAIMS WHICH COME WITHIN THE PROVISIONS OF THIS ACT?

8. An individual claim adverse to the railroad claim is one which, prior to January 1, 1898, was initiated in good faith by some qualified person, by settlement, entry, or purchase, "under color of title or claim of right under any law of the United States or any ruling of the Interior Department," and which is still maintained conformably to such law or ruling, and is one which, in the absence of the railroad claim, could be perfected into full title. (See also par. 6.)

9. The railroad claim is one which arises from the definite location of the line of railroad if the land is within the primary limits of the grant, or which arises from a lieu selection if the land is within the indemnity limits, and is one which, in the absence of all individual claims, would enable the railroad claimant to obtain full title to the land.

10. The purpose of the act is to avoid further strife and contention before the Land Department between the railroad claimant upon the one hand and individual claimants upon the other hand, and to that end the act extends alternately to the individual claimant and the railroad claimant an opportunity to acquire other lands of equal area in lieu of those in contest. The privilege of making a lieu selection is not dependent upon success or failure in the contest, but rather upon the existence of a contest or controversy which is intended to be disposed of without subjecting the parties to the delay, expense, and inconvenience incident to its further prosecution. The act contains a provision that nothing therein "shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Co. is entitled to under laws heretofore enacted;" but in the light of other provisions in the act in harmony with which this one must be construed, it is obvious that this provision is not intended to restrict the operation of the act to those instances in which the railroad claim is ultimately found to be the superior one.

To ascertain that fact would require the prosecution of every contest to a final decision, and would render the act practically inoperative, because, if compelled to litigate its claim to a final decision through the local office, the General Land Office, and before the Secretary of the Interior, it is doubtful whether the railroad claimant would surrender for the benefit of the defeated individual claimant the railroad claim thus established at a cost of much time, expense, and inconvenience. The claim which will support a relinquishment and lieu selection is not described as a lawful one, but as a "right * * * claimed to have attached by definite location or selection," and as a claim initiated in good faith "under color of title or claim of right," etc. Under the act of July 2, 1864 (13 Stat. 365), the railroad company became entitled to all the odd-numbered sections within the primary limits of the grant, or to indemnity for such as were "granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of," at the date of the definite location of its line of road.

Thus, the maximum quantity of lands to which the company was entitled is established by ascertaining the area included in odd-numbered sections within the primary limits of the grant as adjusted to the line of definite location. The clause in the act of July 1, 1898, providing against an enlargement of the quantity of lands to which the railroad company was then entitled has reference to the maximum quantity ascertained as aforesaid, and does not restrict the privilege of making selections under that act to those instances where the railroad claimant has an absolute legal right to the particular lands relinquished, a matter which would not be involved in an ascertainment of the quantity of the grant.

D. WHAT LANDS ARE SUBJECT TO SELECTION IN LIEU OF THOSE RELINQUISHED?

11. Selections will be limited to a quantity of land not exceeding that relinquished, but, since all selections must be according to legal subdivisions which generally approximate but do not always embrace the same area, a slight difference in the acreage of the tract relinquished and selected will not be deemed an inequality in quantity.

12. Subject to the limitations named in paragraphs 13 and 14, selections may be made from any public lands within a State into which the Northern Pacific Railroad land grant extends, surveyed or unsurveyed, not mineral or reserved, not valuable for stone, iron, or coal, not subject to valid adverse claim, and not occupied by a settler at the time of such selection; but odd-numbered sections within the Bozeman, Helena, and Missoula land districts in the State of Montana, and the Cœur d'Alene land district in the State of Idaho, which are also within the primary or indemnity limits of said land grant, can not be selected by or patented to the railroad claimant unless they have been finally classified as nonmineral under the act of February 26, 1895 (28 Stat. 683).

13. Selections of unsurveyed lands by the railroad claimant are confined to odd-numbered sections or legal subdivisions therein "to be identified by the survey when made," that is, the selection must be of the whole or some legal subdivision of a designated odd-numbered section, so that the public survey when made will give identity to the land selected.

Selections of unsurveyed lands by an individual claimant must be designated according to the description by which they will be known when surveyed, if that be practicable, or if not practicable, by giving with as much precision as possible the locality of the tract with reference to known landmarks, so as to admit of its being readily identified when the lines of survey come to be extended, and the selection must be made to conform to such survey within 30 days from the date of the receipt at the local land office of the approved plat of the township embracing such lands.

14. Lands selected by an individual claimant in lieu of other lands, the claim to which has not been carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, must be in a compact body and be of the character subject to entry under the particular law controlling the claim relinquished, and this applies whether the lands selected are surveyed or unsurveyed. (See paragraph 36.)

E. PROCEDURE IN OBTAINING RELINQUISHMENTS

15. As soon as may be practicable after the adoption of these regulations, an examination will be made of the contests pending before the Secretary of the Interior, and those appearing to come within the provisions of the act of July 1, 1898, will be returned to the Commissioner of the General Land Office for disposition hereunder, together with all like contests then pending in the General Land Office. From time to time thereafter other contests or controversies appearing to come within the provisions of said act will be disposed of in like manner. Any claimant believing that his or its claim comes within the provisions of said act may request that such claim be disposed of thereunder, and such request will receive due consideration.

16. In speaking of the surrender by the individual claimant of the lands in contest and the taking by him of other lands in lieu thereof, the act describes it as a transfer of his claim or entry; but since the transaction, whether by the individual claimant or by the railroad claimant, is essentially the same, it is for convenience described and spoken of throughout these regulations as a relinquishment of the lands in contest and a selection of other lands in lieu thereof.

17. The option of relinquishing the lands in contest and selecting other lands in lieu thereof is by law first extended to the individual claimant, and if he elects to hold the lands which are in contest the railroad claimant will be called upon to relinquish the same and to select other lands in lieu thereof. (See pars. 29 to 31, inclusive.)

18. Whenever any contest or controversy appears to come within the provisions of said act, the Commissioner of the General Land Office will notify the individual claimant of the option accorded by law to individual claimants and will request him, if still maintaining his claim as herein required, to make proof of such continued maintenance and to exercise his option within 60 days after the time of receiving such notice. (See par. 30.) If the claimant elects to relinquish the lands in contest and take other lands in lieu thereof, he must execute a proper relinquishment as hereinafter required (see pars. 24 to 26, inclusive), and transmit the same to the Commissioner of the General Land Office, together with notice of his election so to do.

19. In all cases where the individual claim has not passed to final entry and certificate, or to the submission of final proof entitling the

claimant to final entry and certificate, a failure to furnish satisfactory proof of the continued maintenance of the claim and to exercise such option within the time named will be deemed an abandonment of the claim, and the land embraced therein will be disposed of accordingly.

20. In all cases where the individual claim has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, proof of the continued maintenance of the claim is not essential, but a failure to exercise such option within the time named will be deemed an election on the part of the individual claimant to hold the land in contest.

21. The Commissioner of the General Land Office may, in his discretion, extend the time for exercising such option in special cases upon proper cause being shown.

22. An individual claimant may, without formal notice or request, make proof of the continued maintenance of his claim and exercise his option and notify the Commissioner of the General Land Office thereof, in which event the notice and request otherwise required will not be necessary. (See pars. 18 and 24 to 26, inclusive.)

23. From time to time, and as soon as conveniently may be done, the Commissioner of the General Land Office shall prepare and submit to the Secretary of the Interior duplicate lists describing, according to the smallest legal subdivision, the lands to which there are conflicting claims as described in these regulations, and which the individual claimants have elected to hold; and, upon the approval of any such list by the Secretary of the Interior, the Commissioner of the General Land Office will retain one copy thereof in his office and will transmit the other copy thereof to the said railroad claimant, with the request that it relinquish its claims to the lands therein described. Every list will be deemed conclusive against the railroad claimant to the extent that it will be required, within 60 days after receipt thereof, to execute and deliver to the Secretary of the Interior a proper relinquishment to the United States of all the lands in said list, or to make satisfactory showing that those not relinquished have been sold or contracted to be sold, or are used or needed for railroad purposes, or are valuable for stone, iron, or coal. (See pars. 24 to 26, inclusive, and 29 to 31, inclusive.)

F. WHAT IS A PROPER RELINQUISHMENT?

24. The relinquishment must be an instrument in writing describing the lands in contest and making appropriate reference to the claim intended to be surrendered, and in terms releasing, quitclaiming, and relinquishing unto the United States of America all the right, title, interest, and claim of the individual or railroad claimant, as the case may be, to such lands. It must be executed, witnessed, and acknowledged conformably to the laws respecting the conveyance of real property in the State where the land is situate.

25. Relinquishments by individuals of claims which have passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, must also be executed by the wife of the claimant, if he have one, in such manner as will effectually bar any dower, homestead, or other interest on her part in or to the lands relinquished.

26. A relinquishment of an individual claim which has passed to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, or which under existing laws is assignable before that time, and also all relinquishments by the railroad claimant, must be accompanied by proof satisfactorily showing whether the land relinquished has been sold, contracted to be sold, or encumbered. (See pars. 1 and 32.)

G. EFFECT OF RELINQUISHMENT—WHEN RIGHT TO SELECT OTHER LANDS IS COMPLETE

27. Upon the filing with and acceptance by the Commissioner of the General Land Office of a relinquishment by the individual claimant the lands in contest may be patented to the railroad claimant in the same manner as other lands falling within the terms of the grant; and the individual claimant, upon receiving notice of the acceptance of his relinquishment, will be entitled, upon proper application (see par. 32), to select other lands, according to the condition and limitations of said act (see par. 36).

28. Upon the filing with and acceptance by the Commissioner of the General Land Office of a relinquishment by the railroad claimant the lands so relinquished "shall revert to the United States, and such tracts shall be treated under the laws thereof in the same manner as if no rights thereto had ever vested in the said railroad grantee," and the individual claimants thereto shall be permitted to perfect their claims or entries and to obtain title thereunder upon compliance with the laws pertaining thereto. In the event that any individual claim on account of which a relinquishment is made by the railroad claimant is not perfected into full title the lands embraced therein will not revert to the railroad claimant, but will be subject to other disposition, according to law. The railroad claimant, upon receiving notice of the acceptance of its relinquishment, will be entitled, upon proper application (see pars. 32 to 41, inclusive), to select other lands, according to the conditions and limitations of said act.

H. DISPOSITION OF CONTESTS INVOLVING LANDS SOLD OR CONTRACTED TO BE SOLD BY THE RAILROAD CLAIMANT, USED OR NEEDED FOR RAILROAD PURPOSES, OR VALUABLE FOR STONE, IRON, OR COAL

29. By the terms of the act the railroad claimant is exempted and excused from relinquishing lands which have been sold or contracted to be sold by it, or which are used or needed for railroad purposes, or which are valuable for stone, iron, or coal.

30. Where it satisfactorily appears from the record in any contest that the lands in controversy come within the terms of this exemption, the Commissioner of the General Land Office in calling upon the individual claimant to exercise the privilege accorded to him (see pars. 17 and 18), will notify him that the railroad claimant can not be required to relinquish such lands, and that unless he elects to relinquish the same and take other lands in lieu thereof the contest will proceed to final determination without further regard to said act; and where such exemption is satisfactorily shown after the individual claimant has elected to hold the lands in contest (see par. 23), the Commissioner of the General Land Office will notify him thereof and

accord him another opportunity, to be exercised within a stated time, to relinquish the lands in contest and take other lands. In the event that this privilege is declined, the contest will proceed to final decision in the usual way.

31. The affidavit of two persons having personal knowledge of the facts will be deemed sufficient to prima facie establish that any lands come within this exempted class; but such affidavit should state fully when and to whom the lands were sold or contracted to be sold, and if contracted to be sold the extent to which such contract has been performed, and whether it is still subsisting, the necessity for the present or future use of such lands for railroad purposes, and the extent thereof, or how it has been ascertained that they are valuable for stone, iron, or coal, as the case may be.

I. PROCEDURE IN SELECTING LIEU LANDS AND PERFECTING TITLES THERETO

32. Applications to select lieu lands hereunder, whether by an individual claimant or by the railroad claimant, must be presented to the local land office of the district within which the lands selected are situate. The application must particularly state the description and acreage of the lands relinquished, the acceptance by the Commissioner of the General Land Office of the relinquishment, and the description of the lands selected (see par. 13), and must be accompanied by proof that the land selected is of the character subject to selection (see pars. 11 to 14, inclusive). If the records of the local office do not show to the contrary, the character of the land will be deemed to be prima facie established where the application is supported by the oath of the individual claimant, or of an agent of the railroad claimant, based upon a personal examination of the land.

33. If the application is in proper form and, upon examination of the records in the local office, the lands selected appear to be subject to such selection, the local officers will accept the application, give it an appropriate number, make due notation of the selection upon the records of their office, and transmit the papers to the Commissioner of the General Land Office for his consideration.

34. When the lands selected have been returned as mineral by the surveyor general, the first subdivision of paragraph 103 of the mining regulations, approved December 15, 1897,[b] shall be applicable thereto; but in view of the proof exacted by paragraph 32 hereof the requirements of paragraph 104 of such mining regulations will be dispensed with as to all selections hereunder of lands not returned as mineral.

35. When any lands, whether surveyed or unsurveyed, have been selected hereunder by an individual claimant or by the railroad claimant, no right thereto can be initiated by settlement or entry while such selection remains of record.

36. Where lands are selected by an individual claimant in lieu of lands the claim to which has not been carried to final entry and certificate, or to the submission of final proof entitling him to final entry and certificate, the claimant will be required to perfect his right to the lands selected by compliance with the law relating to that class of

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[b] Circular of Dec. 15, 1897, has been superseded by circular of Apr. 11, 1922 (No. 430), p. 807.

claims, and to submit proof thereof in the usual way, but credit will be given for his bona fide residence, improvements, cultivation, or reclamation, as the case may be, and for any payment of fees or purchase money upon the land relinquished, it being the purpose of the act to give individual claimants the same status with respect to the lieu lands selected by them which they occupied with respect to the lands relinquished.

J. TIME OF ISSUING PATENTS TO SELECTED LANDS

37. Unsurveyed lands, whether selected by an individual claimant or by the railroad claimant, will in no event be patented until after survey.

38. Unsurveyed lands selected by the railroad claimant will not be patented until after the expiration of four months from the date of the receipt at the local land office of the approved plat of the township embracing the lands so selected, and surveyed lands selected by the railroad claimant will not be patented until after the expiration of four months from the date of selection.

39. Unsurveyed lands selected by an individual claimant in lieu of lands the claim to which has been regularly carried to final entry and certificate or to the submission of final proof entitling him to final entry and certificate, will not be patented until after the expiration of four months from the date of the receipt at the local land office of the approved plat of the township embracing the lands so selected; and surveyed lands selected by an individual claimant in lieu of lands the claim to which has reached a like status will not be patented until after the expiration of four months from the date of selection.

40. The purpose of the last two paragraphs is, in all instances where publication and notice will not be had, to give to settlers, if any, upon such lands at the time of the selection thereof, the full period prescribed by law within which to apply at the local land office to make homestead entry of the land, and to afford ample time for the local officers to advise the Commissioner of the General Land Office of any such application before the time arrives for issuing patent under the selection.

41. Selections made by the railroad claimant which are found satisfactory by the Commissioner of the General Land Office will, upon the expiration of the time required to elapse before the issuing of patent (see pars. 37 to 40, inclusive), be certified to the Secretary of the Interior, and if approved by him will be patented to the railroad claimant as though originally granted.

K. FORMS TO BE USED IN THE ADMINISTRATION OF SAID ACT

42. The election of the individual claimant to hold or relinquish the lands in controversy and the proof of the maintenance of his claim may be made according to the following form:

THE STATE OF ______,
County of______, ss:

______ ______, being first duty sworn, upon his oath deposes and testifies as follows:

1. Q. What is your name, age, and post-office address?—A. ______.

2. Q. Are you a native-born citizen of the United States; and if so, in what State or Territory were you born?—A. ______.

3. Q. If you are not a native-born citizen of the United States, have you declared your intention to become a citizen or have you been naturalized? If so, when and where?—A. ______.

4. Q. Are you the identical person who has heretofore been claiming (here describe land) under the ______ law? If so, how and when was your claim initiated?—A. ______.

5. Q. Do you understand that there are conflicting claims to this land, one of which is your claim and the other of which is the claim of the Northern Pacific Railroad Company or its successor in interest?—A. ______.

6. Q. Do you desire and elect, under the act of Congress approved July 1, 1898 (30 Stat. 597, 620), to hold the land in controversy and retain your present claim thereto, or do you desire and elect under said act to relinquish the land in controversy and to transfer your said claim to other lands?—A. ______.

7. Q. State fully and accurately where you resided from time to time since the initiation of your said claim to said land.—A. ______.

8. Q. Of whom does your family, if any, consist, and where have they resided from time to time since the initiation of said claim?—A. ______.

9. Q. State accurately what you have done in the way of improving, cultivating, or reclaiming this land, giving dates, value of improvements, and amount of expenditure.—A. ______.

10. Q. How much of the time were you upon said land during the year 1897, and what work did you do or have done thereon during that year?—A. ______.

11. Q. What personal property did you have on this land on January 1, 1898?—A. ______.

12. Q. Have you sold, conveyed, or mortgaged any portion of this land or assigned your claim thereto? If so, state when, to whom, and for what purpose.—A. ______.

13. Q. How much other land do you own now?—A. ______.

14. Q. Have you ever made a filing upon or an entry of other public lands? If so, give the time, description of the land, name of the land office, and character of the filing or entry.—A. ______.

15. Q. To whom can you refer for support and corroboration of the statements made herein?—A. ______.

(Sign plainly with full name.) ______ ______.

I hereby certify that the foregoing testimony was fully read to the said ______ ______ before being subscribed by him, and that the same was subscribed and sworn to by him before me this ____ day of ______, ____.

______ ______.

NOTE.—This affidavit may be made before the register or receiver of the local land office, or before any other officer authorized to administer an oath.

If the claimant elects to relinquish the lands in controversy, he must execute the accompanying relinquishment.

43. A relinquishment by an individual claimant may be made substantially according to the following form, and one by the railroad claimant may be modeled therefrom:

Know all men by these presents:

That, I ______ ______, of ______ County, in the State of ______, the identical person who heretofore initiated and is now asserting a claim to the following-described lands, to wit [described fully and accurately] under the ______ law, desiring to take advantage of the provision in the act of Congress approved July 1, 1898 (30 Stat 597, 620), authorizing an adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, do hereby release, quitclaim, and relinquish unto the United States of America all my right, title, interest, and claim in and to the lands aforesaid, and I request that this relinquishment be accepted by the Commissioner of the General Land Office in order that, under the provisions of the act of Congress aforesaid, I may select other lands in lieu of those hereby relinquished, and may perfect and obtain title to the lands so selected instead of to the lands hereby relinquished.

I, ______ ______, wife of the said ______ ______, for the purposes aforesaid, do hereby join my said husband in releasing, quitclaiming, and relinquishing unto the United States of America the lands aforesaid, and I do specially waive and relinquish any and all dower, homestead, or other interest in the lands relinquished to which I am now or might hereafter be entitled according to law.

Witness our hands and seals this ____ day of ______, A. D. ____.

______ ______ [SEAL.]

______ ______ [SEAL.]

Witnessed by:

______ ______.

______ ______.

NOTE.—This relinquishment must be executed, witnessed, and acknowledged conformably to the laws respecting the conveyance of real property in the State where the lands relinquished are situate, and the officer before whom the acknowledgment is made must make and attach hereto, under his name and official seal, an appropriate certificate of such acknowledgment.

44. The application to select lands in lieu of those relinquished and the affidavit in support thereof may be substantially according to the following forms:

UNITED STATES LAND OFFICE AT ______.
(Date:) ______, ____.

No. ____.

I, ______ ______, of the county of ______, in the State of ______, having made relinquishment of my (state character of claim) claim, covering the ______ of section ____, in township ____, range ____, in ______ land district, containing ______ acres, heretofore included in the conflicting claims of the Northern Pacific Railroad Company, or its successor in interest, and myself, which relinquishment has been duly accepted by the Commissioner of the General Land Office, do hereby make application to select in lieu of the lands so relinquished the following lands, to wit: ________, in ______ land district.

My post-office address is ______, ______.

______ ______.

UNITED STATES LAND OFFICE AT ______.
(Date:) ______, ____.

We hereby certify that we have carefully considered the foregoing application, and have critically examined the plats and records of this office, so far as they apply to the lands sought to be selected. Finding that the application and proofs fully conform to the statute and regulations thereunder, and that the lands selected appear by the records of this office to be subject to such selection, we have accepted the application and have made due notation thereof upon the records pending the advice of the Commissioner of the General Land Office. $ ____ fees paid.

______ ______, *Register.*
______ ______, *Receiver.*

AFFIDAVIT TO BE MADE BY INDIVIDUAL CLAIMANT IN SUPPORT OF FOREGOING APPLICATION TO SELECT

UNITED STATES LAND OFFICE AT ______,
(Date:) ______, ____.

No. ____.

I, ______ ______, of ______ County in the State of ______, being duly sworn upon my oath, do depose and say that my post-office address is ______, ______; that I am the indivdual claimant who makes the foregoing application under the act of July 1, 1898 (30 Stat. 597, 620); that I am acquainted with the lands sought to be selected under the foregoing application, and have examined every subdivision thereof; that there is not to my knowledge with the limits of said land any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, or other mineral substance; that there is not within the limits of said land to my knowledge any placer or other valuable mineral deposit or any salines; that no portion of said land is claimed for mining purposes under local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year; that said land is essentially nonmineral land; that it does not to my knowledge contain any valuable stone, iron, or coal; that it is not reserved in any manner, is not subject to any valid claim whatsoever, and is not occupied by any settler. And further affiant sayeth not.

------, ------.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified to me); that I verily believe him to be a creditable person and the person he represents himself to be; and that this affidavit was subscribed and sworn to by him before me at my office at ------, within the ------ land district, on this ---- day of ------.

------ ------,

------ ------.

NOTE.—This affidavit may be made before the register or receiver of the local land office or before any other officer authorized to administer an oath.

If the claim relinquished be a desert-land claim, timber-culture claim, or a timber-purchase claim, which has not been carried to final entry and certificate, or to the submission of final proof entitling the claimant to final entry and certificate, the applicant must also make proof of the character of the land selected, as required by the regulations controlling that class of claims.

45. The following form may be used in listing lands to be relinquished by the railroad claimant:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., ------ *18*--.

Whereas, an act of Congress, approved July 1, 1898 (30 Stat. 597, 620), makes provision for the relinquishment by the Northern Pacific Railroad Company, or its successors in interest, upon the conditions therein named, of the whole or any part of an odd-numbered section, in either the primary or indemnity limits of the land grant to that company, to which the right of said company, or its lawful successor, is claimed to have attached by definite location, or selection, and which prior to January 1, 1898, has been "purchased directly from the United States or settled upon or claimed in good faith by any qualified settler, under color of title or claim of right under any law of the United States, or any ruling of the Interior Department," or which, if an odd-numbered section in the primary limits, is settled upon after January 1, 1898, and before survey, by a qualified person, in good faith, with a view to homestead entry, and makes provision for the selection by said company, or its successor in interest, of other lands in lieu of those relinquished; and

Whereas, it is further provided in said act that the Secretary of the Interior shall ascertain and from time to time cause to be prepared and delivered to said railroad company, or its successor in interest, a list or lists of the tracts coming within the provisions thereof; and

Whereas, it is further provided by said act that said railroad company, or its successors in interest, shall accept the list or lists so made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but "shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron, or coal"; and

Whereas, it is further provided as to all claims, excepting homestead settlements made on unsurveyed lands after January 1, 1898, that "before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee, or its successor in interest, any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler, or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act"; and

Whereas, upon examination by this office the following tracts of land have been found to be of the character authorized to be relinquished under said act, and the claimants therefor against the railroad company (where entitled to such option) have, upon due notice of their rights under said act, refused to transfer their respective claims to other lands, to wit:

List No. —

State of ______, ______ Land District.

Parts of sections	Sec.	Tp.	R.	Adverse claimants

Now, therefore, the said list is hereby submitted to the Secretary of the Interior for his consideration, with the recommendation that directions be given to this office to call upon the Northern Pacific Railroad Co. or its successor in interest, as the case may be, to relinquish all of said lands or to satisfactorily show that those not relinquished have been sold or contracted to be sold, or are used or needed for railroad purposes, or are valuable for stone, iron, or coal; and to advise said railroad company or its successor in interest that upon filing the relinquishment requested it will be entitled to select other lands in lieu thereof, as provided in said act.

______ ______, *Commissioner.*

Department of the Interior,
______ __, *18__.*

Approved.

______ ______,
Secretary of the Interior.

L. CASES NOT COVERED BY THESE REGULATIONS

46. If in the administration of said act cases are found which are not covered by these regulations, such cases will be disposed of according to their respective merits under special instructions, or supplemental regulations embracing cases of that character will be adopted, as may seem necessary.[c]

Binger Hermann, *Commissioner.*

Approved February 14, 1899.

C. N. Bliss, *Secretary.*

[Reported, 28 L. D. 470]

NORTHERN PACIFIC RAILROAD GRANT—ACT OF JULY 1, 1898

Department of the Interior,
Washington, June 3, 1899.

Acting Secretary Ryan to the Commissioner of the General Land Office:

The department is in receipt of your office letter of May 1, 1899, presenting certain matters relating to the act of July 1, 1898 (30 Stat. 597, 620), in which you state:

By letter of April 8, 1899, Messrs. Britton and Gray, resident attorneys for the Northern Pacific Railroad Co., call the attention of this office to the fact that a number of patents have issued adversely to said company since the passage of the act of July 1, 1898, covering lands which, if unpatented, would come within the provisions of said act, and suggest that so much of the circular of February 14, 1899, as restricts the application of the act to unpatented lands, should be construed as applying only to lands patented prior to July 1, 1898; and hence, in cases where patents have been issued to individual claimants after that date, such claimants should be held to have elected to retain the lands embraced in their respective entries and the company should be allowed the right to select other lands in lieu thereof under said act.

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[c] See supplemental instructions of June 3, 1899, p. 1174.

* * * * * * *

The question presented by said attorneys, as to whether the circular in question is to be interpreted, so as to exclude from disposition under the act of July 1, 1898, all patented lands whether patented prior to or after the date of the act, is therefore respectfully submitted for the consideration and instructions of the department.

Paragraph 7 of the regulations approved February 14, 1899 (28 L. D. 103), issued under the act of July 1, 1898, states that:

> Since the issuance of patent terminates the jurisdiction of the Land Department over the lands patented and exhausts its power to examine and decide upon claims to such lands, and since this act manifestly refers to conflicting claims to lands which have not passed beyond the jurisdiction of the Land Department, it follows that its provisions are confined to unpatented lands, and that lands which have been patented are not the subject of relinquishment and can not be made the basis of a lieu selection under this act.

This portion of the paragraph can only relate to such lands as had been patented prior to the passage of the act of July 1, 1898, and as to all such lands said act is without application. But all conflicting claims coming within the provisions of said act to land which remained unpatented July 1, 1898, should be disposed of in accordance with the terms of that act.

The patenting of lands which were on July 1, 1898, the subject of such conflicting claims without following the provisions of said act was in violation of its terms and therefore erroneous.

To the end that the benefits intended to be extended by said act may be still secured to those entitled thereto, and to avoid possible and unnecessary litigation in the courts as a result of the inadvertent or erroneous issuance of patents since July 1, 1898, in such cases, the following regulation is added to those adopted February 14 last, under said act, namely:

> 47. Where any portion of an odd-numbered section within the limits of the grant to the Northern Pacific Railroad Co. coming within the provisions of the act of July 1, 1898, as herein construed, has been patented without following the provisions of that act, the individual claimant will, notwithstanding the issuance of such patent, be advised, in the manner prescribed by paragraph 18, of the option accorded him by said act. If the patent was issued to him and he elects to relinquish his claim he will be required to make reconveyance of the land to the United States in the manner prescribed by paragraphs 24, 25, and 26; but if he elects to retain the land patented it will be listed according to paragraph 23, with a view to its relinquishment by the railroad company. If the patent was issued to the railroad company and the individual claimant elects to retain the land so patented the company will be required to make reconveyance thereof to the United States according to paragraphs 24 and 26, whereupon the individual claimant may perfect title thereto and the railroad company may select other lands in lieu thereof as in other cases.

[Reported, 30 L. D. 620]

REGULATIONS UNDER THE ACT OF MARCH 2, 1901 (31 STAT. 950), EXTENDING THE PROVISIONS OF THE ACT OF JULY 1, 1898 (30 STAT. 597, 620), TO CERTAIN CLAIMS TO LANDS WITHIN THE INDEMNITY LIMITS OF THE NORTHERN PACIFIC LAND GRANT

Department of the Interior,
General Land Office,
Washington, D. C., June 15, 1901.

The act of March 2, 1901, reads as follows:

> That the provisions of the act of July first, eighteen hundred and ninety-eight, appearing in thirtieth Statutes at Large, at pages six hundred and twenty, six hundred and twenty-one, and six hundred and twenty-two, providing a plan for the adjustment by the land department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, are hereby extended and made applicable to all instances where lands in odd-numbered sections within the indemnity limits of the grant to said company were patented to settlers under the public-land laws in pursuance of applications presented to or proceedings initiated in, the local land office at a time when the land was embraced in a pending indemnity selection made by said company in conformity with the regulations of the land department, which indemnity selection has not since been waived or abandoned.

1. As far as applicable, and as hereby supplemented, the regulations of February 14, 1899 (28 L. D. 103), under the act of July 1, 1898, will be followed in the adjustment of claims under the new act.

2. The fact that conflicting claims to any tract come within the terms of the new act may be brought to the attention of the Commissioner of the General Land Office by either the individual claimant or the railroad company, but there must be such a showing of the present ownership under the patent, whether by the patentee or his transferee, as will enable the Commissioner of the General Land Office to notify the present individual claimant of his option, as provided by paragraph 18 of said regulations, except where he waives notice under paragraph 22 thereof, and a failure of the individual claimant to exercise such option within 60 days after the time of receiving such notice will be deemed an election on his part to retain the land patented, which fact shall be stated in the notice.

3. It being " the provisions of the act of " July 1, 1898, which are extended to the instances named in the new act, it follows that to bring conflicting claims to any tract within this extension of the act of July 1, 1898, all the following conditions must concur:

a. The land involved must be a portion of an odd-numbered section within the indemnity limits of the Northern Pacific land grant;

b. It must have been settled upon under the public land laws prior to January 1, 1898;

c. It must have been selected by the company as indemnity in accordance with then existing regulations prior to January 1, 1898;

d. It must have been patented to the settler prior to July 1, 1898, in pursuance of an application presented to, or of proceedings initiated in, the local land office at a time when the land was embraced in such a pending indemnity selection; and

e. Such indemnity selection must not have been waived or abandoned.

4. An indemnity selection will be held to have been waived or abandoned, (*a*) where the basis assigned therefor has been used or desig-

nated in the selection of other lands; (*b*) where the selection has been formally withdrawn or relinquished or where its rejection has been acquiesced in, but the mere failure of the company to appeal from an adverse decision by the Commissioner of the General Land Office rendered in conformity to an existing departmental decision adverse to the company upon a like state of facts, will not be considered such an acquiescence.

5. Care must be exercised to prevent enlarging the quantity of land to which the railroad company is entitled under laws enacted prior to July 1, 1898, and in this connection attention is invited to subdivision " C " of the regulations of February 14, 1899.

Very respectfully,

Binger Hermann, *Commissioner.*

Approved.

E. A. Hitchcock, *Secretary.*

[Reported, 31 L. D. 424]

REGULATIONS UNDER THE ACTS OF CONGRESS OF JUNE 22, 1874 (18 STAT 194), OF AUGUST 29, 1890 (26 STAT. 369), AND JULY 1, 1902 (32 STAT. 733), FOR THE RELIEF OF SETTLERS ON LANDS GRANTED IN AID OF THE CONSTRUCTION OF RAILROADS AND WAGON ROADS

Department of the Interior,
General Land Office,
Washington, D. C., September 22, 1902.

The act of June 22, 1874, reads as follows:

> That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the preemption or homestead laws of the United States subsequent to the time at which, by the decision of the Land Office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral, and within the limits of the grant, not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: *Provided*, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad, or to extend to lands reserved in any land grant made for railroad purposes: *And provided further*, That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a preemption or homestead settler after the location of the line of the road and prior to the notice to the local land office of the withdrawal of such lands from market.

By act of August 29, 1890, the act of June 22, 1874, was amended as follows:

> That the privileges granted by the aforesaid act approved June twenty-second, eighteen hundred and seventy-four, are hereby extended (subject to the provisos, limitations, and restrictions thereof) to all persons entitled to the right of homestead or preemption under the laws of the United States, who have resided upon and improved for five years lands granted to any railroad company but whose entries or filings have not for any cause been admitted to record.

The following is the act of July 1, 1902:

> That the provision of the act of June twenty-second, eighteen hundred and seventy-four, entitled "An act for the relief of settlers on railroad lands," and all acts amendatory thereof or supplementary thereto, including the act approved March third, eighteen hundred and eighty-seven, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," as modified or supplemented by the act approved March second, eighteen hundred and ninety-six, entitled "An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes," shall apply to grants of land in aid of the construction of wagon roads.

The act of June 22, 1874, authorizes the relinquishment by railroad companies, in favor of settlers, of lands within the limits of their grants which have been entered or filed upon under the provisions of the preemption or homestead laws of the United States subsequent to the time at which, by decision of the Land Office, the rights of said roads have been declared to have attached, and to select in lieu of the land thus relinquished an equal quantity of other lands from any of the public lands within the limits of their grants, nonmineral in character, and not reserved or otherwise appropriated at the date of selection, and to receive title to the same as though originally granted.

As the act of June 22, 1874, limited the relief to persons who had been allowed to make entries, the act of August 29, 1890, extended the privileges granted thereby to persons who have resided upon and improved lands granted to any railroad company for five years, but whose entries for any reason were not admitted of record, and the act of July 1, 1902, extended the provisions of said acts and the acts of March 3, 1887 (24 Stat. 556), which provided for the adjustment of railroad land grants and forfeited the lands then unearned by the construction of the roads, as modified and supplemented by the act of March 2, 1896 (29 Stat. 42), entitled "An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes," to grants of land to aid in the construction of wagon roads.

Therefore, upon the filing of any relinquishment as prescribed in said acts this office is authorized to treat the filing, entry, or claim of the settler as though the land had not been granted to the railroad or wagon-road company.

Where conflicting claims are brought to the attention of this office and the superior right of the company has been ascertained, and it is found that the claim of the settler in the absence of the railroad claim would be allowed, this office will direct the attention of the officers of the company to the facts and request the relinquishment of the land.

At the same time the party interested should himself seek the relief indicated by direct application to the railroad or wagon-road authorities, as the case may be, and thereby aid in securing an early adjustment.

Where patent or its equivalent has not been issued for the benefit of the company, relinquishment may be made by simple waiver of claim; but where title has passed, formal reconveyance will be required, as in other cases of surrender of patents.

The company may file its lieu selection and relinquishment at the same time, or it may file its relinquishment and make its selection at any subsequent time, in which latter case the relinquishment may be sent direct to this office, and upon its receipt proper annotations thereof will be made on the records and the settler's claim immediately released from suspension. But selections of lieu lands must be filed with the register and receiver of the proper local land office and be noted upon their records before transmission to this office.

Selections must be of lands, not mineral, within the limits of the grant, free from other claims and not reserved or otherwise appropriated at date of selection, but the word reserved, as here used, shall not be held to include the sections alternate to those granted, the title to which remains in the United States.

Where selection fees have been paid upon the land relinquished they will be applied to the lieu selection, but where such fees have not been paid the usual selection fees will be charged.

The selections will be reported by the register and receiver in the same manner as other selections, with a reference to the proper act or acts by their date and title; and opposite each tract selected annotation will be made on the records of the tract surrendered. See Forms A and B attached.

It is to be noted that the acts authorizing relinquishments by railroad and wagon-road companies are not mandatory upon the companies, but simply provide a mode of adjustment of conflicting claims depending upon their voluntary action, and the settlers should therefore assist this office to the extent of their ability in securing the relinquishments sought.

For instructions under act of March 3, 1887, see circular of February 13, 1889 (8 L. D. 348).

Very respectfully,

BINGER HERMANN, *Commissioner.*

Approved.

THOS. RYAN,
Acting Secretary of the Interior.

(Forms omitted.)

[Reported, 35 L. D. 10]

NORTHERN PACIFIC GRANT—ADJUSTMENT—ACT OF MAY 17, 1906, EXTENDING ACTS OF JULY 1, 1898, AND MARCH 2, 1901

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 6, 1906.

The act of May 17, 1906 (34 Stat. 197), reads as follows:

> That the provisions of the act of July first, eighteen hundred and ninety eight (Thirtieth Statutes, pages five hundred and ninety-seven and six hundred and twenty), which provided for the adjustment by the Land Department of conflicting claims to lands within the limits of the grant to the Northern Pacific Railroad Company, and also the provisions of the act of March second, nineteen hundred and one, entitled "An act for the relief of settlers under the public land laws to lands within the indemnity limits of the grant to the Northern Pacific Railroad Company," be, and they hereby are, extended to include

> any *bona fide* settlement or entry made subsequent to January first, eighteen hundred and ninety-eight, and prior to May thirty-first, nineteen hundred and five, in accordance with the erroneous decision of the Land Department respecting the withdrawal on general route of the Northern Pacific Railroad between Wallula, Washington, and Portland, Oregon, where the same has not since been abandoned: *Provided*, That all lieu selections made under this act shall be confined to lands within the State where the private holdings are situated.
>
> Sec. 2. That this act shall become effective upon an acceptance thereof by the Northern Pacific Railway Company being filed with the Secretary of the Interior.

With the exception that the lieu selections made under its provisions are confined to lands within the State where the relinquished lands are situated, the act extends in terms the provisions of the acts of July 1, 1898, and March 2, 1901, to include any bona fide settlement or entry made subsequent to January 1, 1898, and prior to May 31, 1905, in accordance with the decisions of this department respecting lands within the withdrawal on general route under the map of August 13, 1870, for the Northern Pacific Railroad (now Railway), Co., and the limits on definite location of the company's branch-line grant near Wallula, Wash., and those of the main-line grant near Portland, Oreg.

The regulations issued under the acts of July 1, 1898, and March 2, 1901, supra, the former on February 14, and June 3, 1899, (28 L. D., 103, 470), and the latter on June 15, 1901 (30 L. D. 620), with the exception above noted will be followed in the adjustment of claims under the new act.

Very respectfully,

G. F. Pollock,
Acting Commissioner.

Approved July 6, 1906.

Thos. Ryan, *Acting Secretary.*

Circular No. 403 [d]

INDIAN ALLOTMENT APPLICATIONS UNDER THE ACT OF MARCH 4, 1913

Department of the Interior,
General Land Office,
Washington, April 24, 1915.

Registers and Receivers, United States Land Offices, Arizona, California, and New Mexico.

Sirs: You will at once transmit by special letter all Indian allotment applications now on file in your offices where the applicants claim the benefits of the act of March 4, 1913 (37 Stat. 1007), and the applications are complete with the exception that there has not been filed the certificate of the Commissioner of Indian Affairs heretofore required under the regulations to the effect that the applicants are Indians and entitled to allotments. Hereafter when applications for allotments are filed in your office by Indians entitled, or claiming to be entitled, to the benefits of said act of March

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[d] See Circulars Nos. 533, p. 1184, and 1144, p. 1196.

4, 1913, you will not suspend them for the above certificate of the Commissioner of Indian Affairs, but will transmit them at once to this office by special letter. In all cases where applications are transmitted by special letters, suitable notations to show that fact should be made on your schedule of monthly returns. In any cases where you have declined to receive or have returned to the parties applications for allotments by Indians entitled to the benefits of said act because the said certificate of the Commissioner of Indian Affairs had not been furnished, you will now notify the proper parties that they may file applications, and upon their receipt at your office you will transmit them promptly to this office as directed above. These instructions are not intended to apply to Indian allotment applications generally, but only to those coming under the said act of March 4, 1913.

By its own terms the said act of March 4, 1913, expires on March 4, 1916, and it is desired that all cases coming under its provisions be expedited as much as possible. You will, therefore, use all reasonable efforts to procure the early filing and prompt transmission to this office of all applications coming under the said act.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

FRANKLIN K. LANE,
Secretary.

[Reported, 45 L. D. 617]

CIRCULAR No. 522

REGULATIONS UNDER THE ACT OF APRIL 28, 1904 (33 STAT. 556)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 24, 1917.

Registers and Receivers, United States Land Offices in New Mexico.

SIRS: The act of April 28, 1904 (33 Stat. 556), entitled "An act for the relief of small-holding settlers within the limits of the grant to the Atlantic and Pacific Railroad Co. in the Territory of New Mexico," provides:

> That the Atlantic and Pacific Railroad Company, its successors in interest and its or their assigns, may, when requested by the Secretary of the Interior so to do, relinquish or deed, as may be proper, to the United States any section or sections of its or their lands in the Territory of New Mexico the title to which was derived by said railroad company through the act of Congress of July twenty-seventh, eighteen hundred and sixty-six, in aid of the construction of said railroad, any portion of which section is and has been occupied by any settler or settlers as a home or homestead by themselves or their predecessors in interest for a period of not less than twenty-five years next before the passage of this act, and shall then be entitled to select in lieu thereof and to have patented other sections of vacant public land of equal quality in said Territory, as may be agreed upon with the Secretary of the Interior.
>
> SEC. 2. That the Secretary of the Interior shall, as soon as may be after the passage of this act, cause inquiry to be made of all lands so held by settlers, and shall cause the holdings of such settlers to be surveyed, and on receiving such relinquishments or deeds shall at once, without cost to the settlers, cause

patents to issue to each such settler for his or her holdings: *Provided,* That not to exceed one hundred and sixty acres shall be patented to any one person, and such recipient must possess the qualifications necessary to entitle him or her to enter such land under the homestead laws.

SEC. 3. That any fractions of any such sections of land remaining after the issuance of patents to the settlers as aforesaid shall be subject to entry by citizens the same as other public lands of the United States.

The purpose of this act is to enable certain claimants to lands, known as "small-holding claimants," who were authorized to receive patents for such lands, not to exceed 160 acres, upon specified conditions, by sections 16 and 17 of the act of March 3, 1891 (26 Stat. 854), as amended by the act of February 21, 1893 (27 Stat. 470), to complete title to their entire claims, the odd-numbered sections in a number of cases having passed under the grant by Congress to the Atlantic & Pacific Railroad Co.; but it will be observed that the benefits intended to be conferred are restricted to the odd-numbered sections within the limits of said railroad grant in what is now the State of New Mexico, and that the act is not mandatory, but simply provides a means for the relief of said claimants depending upon the voluntary relinquishment by the railroad company, or its successors in interest and its or their assigns, upon request of the Secretary of the Interior, of the lands claimed.

Under the provisions of the act of March 3, 1891, as amended by the act of February 21, 1893, supra, and the act of February 26, 1909 (35 Stat. 655), a claim not filed with the surveyor general of New Mexico before March 4, 1910, is invalid, and it does not appear to be the intention of the present law to revive any such claim, excepting so much thereof as may be found to be within an odd-numbered section or sections granted to the Atlantic & Pacific Railroad Co.

Settlers on railroad lands in the State of New Mexico having claims subject to adjustment under the provisions of the act of April 28, 1904, should file in the proper local land offices proofs of their claims. The proof required of claimants under this act is that the land claimed has been occupied as a home or homestead by themselves or by their predecessors in interest, as settlers, for a period of at least 25 years immediately preceding the passage of this act, and that the claimants possess the qualifications necessary to entitle them to enter lands under the homestead law. This proof may be made before your office or before any officer authorized to take homestead proofs, and may consist of the affidavit of the claimant, corroborated by at least two witnesses having knowledge of the facts; and in cases where the claimant was not himself a settler during the whole period of 25 years next before the passage of the act, but bases his claim partly upon the occupancy of prior settlers, the affidavits must give the names of such settlers, the periods covered by their respective settlements, and the material facts evidencing such settlements.

As the law provides that the lands to which the claimants may be found entitled shall be patented without cost to them, you will not require the payment of any fees or commissions, but publication of notice of intention to make proof will be made in accordance with the requirements of the circular of March 30, 1909 (37 L. D. 536). When the proof is filed in your office you will examine it and if found defective in any respect or insufficient to entitle the claimant to the tract applied for, you will reject it in the usual way or take other appropriate action; but if the proof is complete and in your judgment sufficient to entitle the claimant to the land, you will transmit it to this office without the issuance of a final certificate, together with your recommendation and a statement of the facts disclosed by your records relative to the land involved. When the proof reaches this office it will be examined, and if upon its face it is found sufficient, the railroad company will be called upon for a statement as to whether it owns the land, and if so, whether it would be willing to reconvey in case the settlement claim be found sufficient under the law. If the company or its assigns decline to entertain the suggestion of reconveyance, in such event the settlement claim will be rejected. But if reply is made in the affirmative, then field examination will be directed, not only with reference to the facts alleged in the proof but also as to the quality of the land applied for and all of the land in any section thus affected. Should the field examination show the settlement claim to be invalid, charges will be lodged against the claim, and the matter will proceed to final determination under the usual procedure. Should decision be favorable to the settlement claim upon report of the field examiner, or upon the hearing, as the case may be, the railroad company will then be requested to convey the land to the Government by proper deed or relinquishment with evidence of title, which instrument of conveyance should not be recorded until accepted by the department. Should the deed or relinquishment be accepted, it will be returned to the company to be properly recorded on the records of the county in which the land involved is situated, after which it will be retransmitted for the files of this office. You will then be directed to issue final certificate upon the settlement claim as a basis for patent. The company may then file application for land of equal area and quality with that conveyed.

The authority given the railroad company to relinquish lands covered by the claims of the settlers and select other lands in lieu thereof does not restrict it to the acreage embraced in such 'claims, but the company may relinquish any part, or the whole, of any section containing such claim or claims, and any fraction of any such section remaining after the issuance of patients to the settlers will be subject to entry the same as other public lands.

For any lands reconveyed by the company after April 28, 1916, (the date of the departmental order so directing), it will be required to select in lieu thereof an area in compact form approximating that relinquished. For example, if 160 acres be relinquished for the benefit of any one settlement claim, a selection in lieu thereof must be in compact form approximating that area; and if an entire section be relinquished because of a settlement claim or claims for a portion thereof, then in that case the lieu selection must be of a like area in compact form.

If it be found upon examination when it reaches this office that the company's application to make lieu selection is regular on its face, the field service will be directed to make an investigation in the field with reference to the quality of the land selected, and also as to the quality of any of the base land not already examined as to its quality. When the report of the field examination has been received, further appropriate action will be taken on such selection.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 46 L. D. 44]

CIRCULAR No. 533 [2]

INDIAN OCCUPANTS OF RAILROAD LANDS—INSTRUCTIONS UNDER THE ACT OF MARCH 4, 1913 (37 STAT. 1007), AND THE ACT OF APRIL 11, 1916 (39 STAT. 48)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 12, 1917.

Registers and Receivers, United States Land Offices in Arizona, California, and New Mexico.

SIRS: Indian occupants of railroad lands who are entitled to the benefits of the act of March 4, 1913 (37 Stat. 1007), as extended by the act of April 11, 1916 (39 Stat., 48), should file in the proper local land offices their applications for allotment in the usual manner. Each application must be accompanied by a showing to the effect that the Indian claiming the benefits of the act has occupied the land involved for the required period of five years or more. Said showing may consist of the affidavit of the applicant, setting forth when the occupancy began, how long it continued, just what it consisted of, and such other pertinent facts as will enable the department to determine the nature and extent of the alleged occupancy. This affidavit must be corroborated by at least two witnesses familiar with the facts. When such applications and showings are filed in the proper local offices, the registers and receivers will transmit them to this office, observing the instructions contained in Circular No. 403 of April 24, 1915.

2. When an application and the accompanying showing reaches this office they will be examined, and if on their face they show that the Indian is qualified to make an allotment under existing law and has occupied the land applied for in accordance with the requirements of the said act, the railroad company will be called upon for a statement as to whether it owns the land, and if so, whether it would be willing to reconvey it under said act in case it be found that the Indian's occupancy is sufficient and he would be otherwise qualified to take an allotment of the land. If the company or its assigns decline to entertain the suggestion of reconveyance then the Indian's application will be rejected; but if a reply is made in the

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[2] See Circular No. 1144, p. 1196.

affirmative, field examination will be directed not only with reference to the Indian's qualifications and his occupancy of the land, but also as to the value of the land. Should the field examination show that the Indian has not occupied the land as required by the statute or that he would otherwise be disqualified to take an allotment of it, charges will be lodged against his claim and the matter will proceed to a final determination under the usual procedure. Should decision be favorable to the Indian's claim upon the report of the field examiner or upon the hearing, as the case may be, the railroad company will then be requested to convey the land to the United States by proper deed or relinquishment with evidence of title and the nonalienation and nonencumbrance of such title. The instrument of conveyance should not be recorded until it has been accepted by the department. Should the deed or relinquishment be accepted, it will be returned to the company to be properly recorded on the records of the county in which the land involved is situated, after which it will be retransmitted for the files of this office. When the deed or relinquishment has been properly recorded and returned to this office suitable notations of the conveyance will be made upon the records of this and the local office, after which appropriate action will be taken on the Indian's application for allotment with a view of its allowance.

After a deed or relinquishment has been accepted, recorded, and returned to this office, the railroad company may make selection of other vacant nonmineral, nontimbered, surveyed public lands of equal area and value situated in the same State, in accordance with the provisions of the statute, provided it is made within the time fixed thereby. Said lieu selection will be filed in the proper local office where it will receive appropriate action by the register and receiver in the same manner as indemnity or other kinds of railroad lieu selection. If it be found upon examination when it reaches this office that the company's lieu selection is regular on its face, the field service will be directed to make an examination in the field with reference to the character of the land selected by the company and also as to whether it and the land relinquished by the company are of equal value. When the report of the field examination has been received by this office, further appropriate action will be taken on the selection.

These instructions will supersede those contained in Circular No. 510 of October 11, 1916, said Circular No. 510 being hereby revoked and recalled.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 46 L. D. 98]

Circular No. 548

REGULATIONS UNDER THE ACT OF FEBRUARY 27, 1917 (39 STAT. 946), PROVIDING FOR THE ADJUSTMENT OF CONFLICTING CLAIMS TO NORTHERN PACIFIC RAILWAY LANDS IN THE STATE OF WASHINGTON

Department of the Interior,
General Land Office,
Washington, April 28, 1917.

Registers and Receivers, United States Land Offices, at North Yakima, Seattle, Spokane, Vancouver, Walla Walla, and Waterville, Wash.

Sirs: Appended hereto is a copy of the recent act of Congress approved on February 27, 1917 (39 Stat. 946), providing relief for certain settlers on unsurveyed lands of the Northern Pacific Railway Co. in the State of Washington. In order that the purposes of said act might be carried out without interference with the vested rights of the railway company and that the proper demands of the department upon the company under the act might be mandatory as under the general provisions of the act of July 1, 1898 (30 Stat. 597, 620), the company was on March 15, 1917, requested to accept the act and consent to its provisions. Under date of April 2, 1917, the company declined to accept the provisions of the act. The company having thus refused to give its consent to the provisions of the act, the department can not compel it to relinquish or reconvey its lands in favor of settlers as is done under the general provisions of the said act of July 1, 1898, where the company waived its rights by its written acceptance of the said act.

However, a settler claiming the benefits of the said act of February 27, 1917, may file in the proper local office proof of the existence and maintenance of his claim and an election to hold or relinquish the land embraced therein. Such proof and election may be made on Form 4–381, modified where necessary to conform to the requirements of the act. If the settler elects to retain the lands claimed by him and his proof shows that his claim comes within the provisions of the act, this office will request the railway company to relinquish or reconvey the lands to the United States. Should the company relinquish or reconvey, the settler will be permitted to make entry of the lands and the company will be authorized to select other lands in lieu thereof in accordance with the provisions of the act. Should the company decline to relinquish or reconvey the lands involved the settler's only remedy will be to surrender the lands and transfer his claim to other lands. Upon receipt of the company's refusal to relinquish or reconvey, the settler will be notified thereof and accorded the privilege of relinquishing the lands and transferring his claim to other lands in accordance with the provisions of the act of July 1, 1898.

If, on the other hand, the settler in the first instance accompanies his proof of the existence and maintenance of his claim with his relinquishment of the lands settled upon by him and a request for the transfer of his claim to other lands, or in case he does so after notice of the refusal of the company to relinquish or reconvey as outlined in the preceding paragraph, this office will, if the proof is satisfactory, authorize the transfer of the settler's claim to other lands, after which he may make a lieu selection and perfect same in accordance with existing regulations under the act of July 1, 1898.

In those cases where the railway company has already been requested to relinquish the lands claimed by the settler under the special provisions of the act of July 1, 1898, and it has refused to do so, it would be useless to request it to relinquish or reconvey them under the said act of February 27, 1917. Manifestly it would be a waste of time and trouble for settlers in this class of cases to elect to retain the lands settled upon by them. In this class of cases, therefore, the settler should file with his proof a relinquishment of the lands settled upon by him, together with a request for the transfer of his claim to other lands.

The regulations under the act of July 1, 1898 (28 L. D. 103), will govern so far as applicable in cases arising under the said act of February 27, 1917, except in such matters as are specifically covered by the instructions contained herein.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved April 28, 1917.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

(Act omitted.)

[Reported, 47 L. D. 138]

CIRCULAR No. 643

REGULATIONS FOR THE RELIEF OF SETTLERS UPON CERTAIN LANDS IN THE STATE OF MONTANA—ACT OF FEBRUARY 28, 1919

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 2, 1919.

Registers and Receivers, United States Land Offices, Billings, Bozeman, Glasgow, Great Falls, Havre, Helena, Kalispell, Lewistown, Miles City, and Missoula, Mont.:

Appended hereto is a copy of the act of Congress, approved February 28, 1919 (40 Stat. 1204), providing for the relief of certain settlers upon indemnity lands of the Northern Pacific Railway Co. in the Indian reservation therein described in the State of Montana.

In response to request that it indicate its formal acceptance of the provisions of the act the railway company by its land commissioner on March 25, 1919, advised this office that it was willing to proceed with the adjustment under the act in meritorious cases, in accordance with the previous correspondence leading up to the passage of the act. Such correspondence indicated that the number of cases to be adjusted would not exceed 60, embracing not more than 17,000 acres.

LANDS SUBJECT TO ACT

The lands affected by the act are lands within the indemnity limits of the grant to the Northern Pacific Railroad (now Railway), Co., through that portion of the former reservation for the Gros Ventre, Piegan, Blood, Blackfoot, and River Crow Indians, lying south of the Missouri River in the State of Montana, found to be in the possession of actual bona fide qualified settlers under the homestead laws of the United States, who have made substantial improvements thereon and which lands have been adjudged by the Secretary of the Interior to inure to the Northern Pacific Railway Co. under the grants made to its predecessor in interest, the Northern Pacific Railroad Co.

SETTLER CLAIMS

The list of 60 cases hereinbefore referred to does not appear to have been filed, but the company will be requested to file the same for consideration. Upon receipt of said list, the cases of the various settlers will be examined. Where they are found to come within the terms of the act, the company will be requested to file relinquishments of the lands involved in favor of the settlers and to select other lands in lieu thereof, as provided by the act.

It is not intended by this statement to assume that the 60 cases referred to are all the cases which come within the provisions of the act, but where other conflicting claims are brought to the attention of the department and it is found that they are of the character contemplated by the act, and the lands adjudged to inure to the Northern Pacific Railway Co. under the grants made to its predecessor in interest, the Northern Pacific Railroad Co., under the acts of July 2, 1864 (13 Stat. 365), and May 31, 1870 (16 Stat. 378), the attention of the officers of the railway company will be called thereto and relinquishments will be requested for the benefit of the settler claimants.

RELINQUISHMENTS—HOW MADE

Relinquishments by the railway company may be the same in manner and form as those provided for by the circular of February 14, 1899 (28 L. D. 103), under the act of July 1, 1898 (30 Stat. 597–620). Where title has passed to the company by patent, a formal deed of reconveyance will be required, accompanied by evidence satisfactorily showing that the company has not sold or contracted to sell the tract therein described or in any manner encumbered the same.

DISPOSITION OF LAND RELINQUISHED

Upon the filing with and acceptance by the Commissioner of the General Land Office of relinquishments by the railway company, the lands relinquished will be treated as having reverted to the United States and the settler claimants will be permitted to perfect their claims in the manner provided by the homestead laws. The railway company, upon proper application, will be permitted to select an equal quantity of other lands in lieu of those relinquished, in the manner directed by the act, to which it shall receive title as though originally granted.

LAND SUBJECT TO LIEU SELECTION

The lands subject to selection in lieu of those relinquished are surveyed public lands within the State of Montana, not mineral, and not otherwise appropriated at the date of selection. Lands withdrawn or classified as coal lands are subject to selection by the company, but as to these, the act provides that the company shall receive the restricted patent provided for by the act of June 22, 1910 (36 Stat. 583).

ACT NOT MANDATORY

It is to be observed that the act is not mandatory upon the railway company, but authorizes it to file relinquishments in favor of such settlers, within the territory designated as have made substantial improvements upon lands adjudged by the Secretary of the Interior to have inured to the railway company under the grants mentioned. It depends for its effect upon the concurrent action of the railway company, the Land Department, and the settlers affected thereby.

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

(Act omitted.)

[Reported, 49 L. D. 451]

EXCHANGE OF SANTA FE RAILROAD CO. LANDS IN MOHAVE COUNTY, ARIZ.—ACT OF AUGUST 24, 1922

Department of the Interior,
Washington, D. C., February 20, 1923.

The Commissioner of the General Land Office.

The act of Congress approved August 24, 1922 (42 Stat. 829), provides:

> That the Secretary of the Interior be, and he is hereby, authorized and empowered, in his discretion, to accept a relinquishment from the owners of the odd-numbered sections of land falling within townships sixteen, sixteen and one-half, and seventeen north of range thirteen west, Arizona, and permit said owners to select and receive in exchange therefor patents of an equal area of vacant surveyed, nonmineral, nontimbered public land of the United States in the County of Mohave, State of Arizona.

According to the report (No. 722, 67th Cong. 2d sess.), of the Committee on Public Lands, House of Representatives, which report was adopted by the Senate Committee on Public Lands and Surveys (Rept. No. 801), the object of the bill was to afford relief to those persons who had settled on land in the odd-numbered sections of land in the townships described, which land, unless mineral in character, inured to the Santa Fe Pacific Railroad Co. (successor to the Atlantic & Pacific Railroad Co.), under its grant by the act of July 27, 1866 (14 Stat. 292), upon the filing of the map of definite location of the line of road on March 12, 1872.

Under the discretion vested in the Secretary of the Interior by said act, the Santa Fe Pacific Railroad Co. will be allowed six months from the date hereof within which to relinquish to the United States the lands inuring to it in the townships described. Such relinquishment should be made in accordance with the regulations governing relinquishments under the exchange provisions of the act of June 4, 1897 (30 Stat. 11, 36). Upon the acceptance of the relinquishment, which should be accompanied by a satisfactory abstract of title of the relinquished land, the said railroad company will become entitled to select, within 10 years from the date hereof, an equal area of vacant surveyed, nonmineral, nontimbered public land in Mohave County, Ariz.

Selections filed under the provisions of the act will be governed, as to posting and publication of notice, by the regulations governing selections under the act of June 4, 1897, supra. The fees to be paid will be at the rate of $2 for each 160 acres or fraction thereof included in the selection.

As selections are perfected you will, if all be found regular, submit them to the department for approval.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 399]

Circular No. 931 [3]

INSTRUCTIONS AS TO NORTHERN PACIFIC RAILROAD (NOW RAILWAY) GRANT LANDS

Department of the Interior,
General Land Office,
Washington, April 28, 1924.

Registers and Receivers, United States Land Offices, Idaho, Minnesota, Montana, North Dakota, Oregon, Washington, Wisconsin, Wyoming.

Gentlemen: By joint resolutions, Senate No. 82 and House Nos. 183 and 237, it is provided, among other things, that no patent shall issue to the Northern Pacific Railroad (now Railway) Co. under the acts of July 2, 1864 (13 Stat. 365), and May 31, 1870 (16 Stat. 378), granting land to the said company, or under acts supplemental thereto or connected therewith (H. J. Res. 237)—

> until after Congress shall have made a full and complete inquiry into the said land grants and acts supplemental thereto for the purpose of considering legislation to meet the respective rights of the Northern Pacific Railroad Company and its successors and the United States in the premises.

Under departmental instruction of April 19, 1924, in connection with the above resolutions, it is directed that you receive all applications by the company to list or select land, when such applications are regular in all respects, assign serial numbers thereto, note them on your records as applications, and forward them to this office without action. Fees tendered with such applications should be carried as unearned until further advised. However, when necessary to reject an application wholly or in part, for any reason, you will proceed as heretofore, but will not, in any case, allow and approve any application by the company, original or supplemental, until further advised.

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[3] See also Public Resolution No. 85, 70th Cong., approved Feb. 16, 1929 (45 Stat. 1221).

All applications by parties not claiming or asserting a right under or through the company, apparently conflicting with a claim, or claims, by or through the company, will be received and acted on as heretofore.

Acknowledge receipt hereof by letter.

Very respectfully,

William Spry, *Commissioner*

Approved April 28, 1924.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 587]

Circular No. 956

RAILROAD SELECTIONS—INSTRUCTIONS

Department of the Interior,
General Land Office,
Washington, July 23, 1924.

Registers and Receivers, United States Land Offices.

Each application to list or select lands in satisfaction of grants made by Congress for railroad, wagon road, or canal purposes must be filed in triplicate and the original must be accompanied, at the time of filing, by an affidavit made by an authorized examiner, agent, or employee of the applicant, showing that the lands sought to be listed or selected are nonmineral in character. Each such affidavit must be based on personal knowledge of the affiant and must give the date or dates that examination of the land was made. The attached form of affidavit, approved by the Commissioner of the General Land Office on June 30, 1911, must be used. The usual fees must accompany the said list or selection.

Upon receipt of such a list or selection you will cause it to be examined and certify the same as to such tracts against which there is no objection.

You will then return the triplicate to the applicant with your notice of rejection or allowance, retain the duplicate for your files, and at the proper time transmit the original to this office in the regular order of business.

If any part of the list or selection is not subject to appropriation by the applicant or if any part of said list or selection is not covered by the proper nonmineral affidavit, you will, as to such tracts, reject the same subject to the usual right of appeal.

If no appeal is taken within the time allowed, your action becomes final and eliminates such rejected tracts from the list or selection.

You will specifically describe on the lists or selections the tracts so eliminated. You will apply the proper amount of fees covering the land that is clear and return the balance, if any, without further notice from this office.

If, within the time allowed, an appeal is taken, you will transmit it with the original list or selection to this office in the regular order of business, and certify only the land against which there is no cause for rejection. You will apply the proper amount of fees covering the said land that is clear and hold the balance as unearned until further notified by this office.

Under these instructions the attached form of nonmineral affidavit must be used and must be filed at the same time the selection or list is filed. Also, these instructions revoke the present practice of requiring the applicant to file supplemental lists or selections A and B, respectively, for lands that are clear and those that are not clear.

Circular of July 9, 1894 (19 L. D. 21), is hereby revoked. However, this does not rescind or in any way affect the necessity of publication where the same is now otherwise required.

Very respectfully,

William Spry, *Commissioner.*

Approved July 23, 1924.

E. C. Finney,
First Assistant Secretary.

(Form omitted.)

[Reported, 51 L. D. 80]

Circular No. 988

GRANTS OF LAND TO AID IN THE CONSTRUCTION OF RAILROADS AND OTHER PURPOSES—PUBLICATION

Department of the Interior,
General Land Office,
Washington, March 28, 1925.

Registers and Receivers, United States Land Offices.

Gentlemen: On and after this date notice of all listings by States, railroad or wagon-road companies, other corporations or individuals, their successors or assigns, of any lands within the primary or granted limits of a grant made to aid in the construction of railroads, wagon roads, canals, river improvements, etc., and which inure or pass to the grantee or its successor or assigns under the terms of the acts making the grants or any amendment thereof, and of all selections of lands within the limits of such grant, either primary or indemnity, and indemnity for lands lost or excepted from the grant under the terms of the acts making the same must be given by publication in a newspaper of general circulation in the county wherein the lands are located, the paper to be designated by the register or official performing the duties of register.

Notices for publication will be prepared at the time of acceptance of the selections, and will be transmitted by registered mail to the proper individual or official of the State, Territory, or corporation, for publication in the paper or papers designated, and a copy of such notice shall also be posted by the register, or official performing the duties of the register, in a conspicuous place in his office and remain so posted until the expiration of time allowed for the submission of proof of publication.

To save expense, two or more lists or selections may be embraced in one publication when it may be done consistently with the requirement of publication in a newspaper of general circulation in the county where the land is situated.

The published notice will be by the largest legal subdivisions where consolidation is possible, care being taken to avoid repetition of numbers of sections, townships, and range. The base lands are not to be included in the notice published.

Proof of publication will be the affidavit of the publisher or foreman of the designated newspaper that the notice (a copy of which must be annexed to the affidavit) was published in said newspaper once a week (if a weekly paper) for 5 consecutive issues; if in a semiweekly paper for 9 and if in a daily paper for 30 consecutive issues.[e]

The proof of publication of notice must be filed with the register within 90 days after receipt of notice for publication and will be forwarded by the register to the General Land Office with a report as to whether protest or contest has been filed against any list or selection, and if protest or contest is filed the same shall accompany the report. Failure by the individual or official of the corporation, State, or Territory to furnish proof of publication within the time limited will be cause for the rejection of the selection, upon report by the register of such failure accompanied with evidence of the receipt by the parties of the notice for publication.

During the period of publication, or any time thereafter, and before final approval and certification, the local officers may receive protest or contest as to any of the tracts applied for and transmit the same to the General Land Office.

Where lands sought to be selected are alleged, by way of protest, to be mineral, or were applications for patents therefor are presented under the mining laws, or are otherwise adversely claimed, proceedings in such cases will be in the nature of a contest and will be governed by the rules of practice in force in contest cases.

Notice of all other applications for lands in exchange for or in lieu of lands which inured to the grantee, its successors, or assigns, under the acts making the grant, or amendments thereof, and the exchange or right to select in lieu of which was authorized by a remedial or special act must be published in accordance with the provisions of circulars of February 21, 1908 (36 L. D. 278), or November 3, 1909 (38 L. D. 287), unless specific provision is made for publication of notice of exchange or lieu selections under a specific act or by a specific or special circular or regulation relating to such act, in which case such circular or regulation will control.[e]

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[e] See instructions of Oct. 19, 1929, p. 1149.

In all cases publication of notice must be made under one or the other of the above provisions, whether or not it was required heretofore and any ruling to the contrary is hereby revoked.

Very respectfully,

William Spry, *Commissioner.*

Approved March 28, 1925.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 487]

Circular No. 1077 [4]

INSTRUCTIONS AS TO LISTING BY LAND-GRANT RAILROAD COMPANIES OF LESS THAN A LEGAL SUBDIVISION

Department of the Interior,
General Land Office,
Washington, July 9, 1926.

Registers, United States Land Offices.

Gentlemen: By a decision of the Court of Appeals of the District of Columbia in the case of Work *v.* Central Pacific Railway Co. (No. 4392), transmitted by the department May 27, 1926 (A–3740), and involving primary list Elko 02291, it was held that under the acts making a grant of lands to the company, title to all the nonmineral lands in the odd numbered sections within the primary limits of the grant vested in the company, no other objection appearing, irrespective of the fact that such nonmineral land constitutes only a part of a quarter quarter of a section or of a lot. This reverses the previous rulings of the department, in so far as they relate to primary lands, that, as a legal subdivision could not be divided, if any part thereof was mineral all the subdivision was impressed with a mineral character and excepted from the grant.

You will, therefore, hereafter accept a listing of primary lands by a land grant railroad company for less than a legal subdivision provided it is for all the nonmineral land in such subdivision, the company makes an affirmative showing as to the mineral character of the remaining land in the subdivision and no other objection appears.

If the listing can be by aliquot parts of a subdivision, such as the NE. ¼ of NE. ¼ of NE. ¼ (10 acres), or S. ½ of NE. ¼ of NE. ¼ (20 acres), a survey, to segregate the nonmineral from the mineral land, would be avoided. If a survey is necessary the company will be required to pay for the execution thereof.

The court further held that as to indemnity lands, the rulings of the department that such lands must be selected in accordance with the legal subdivisions shown by the plats of survey officially filed, was reasonable and proper and must be complied with.

A legal subdivision of indemnity lands therefore can not be subdivided but must be selected and its character and status determined as a whole, except as provided for in 49 L. D. 250 and 303, and 50 L. D. 577, which still remain applicable to indemnity lands.

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[4] Amended by Circular No. 1139, p. 1195.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved July 9, 1926.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 52 L. D. 254]

CIRCULAR NO. 1139[5]

INSTRUCTIONS AS TO LISTING BY LAND-GRANT RAILROAD COMPANIES OF LESS THAN A LEGAL SUBDIVISION—EXAMINATIONS IN THE FIELD AND HEARINGS ORDERED IN CONNECTION THEREWITH

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 9, 1928.

Registers, United States Land Offices, Division Inspectors, Interior Department.

GENTLEMEN: As supplemental to Circular No. 1077 of July 9, 1926 (51 L. D. 487), the following instructions will be followed in making examination in the field and in connection with hearings as to railroad lands, within primary limits.

In examining in the field the smallest subdivision or unit that should be recognized is that aliquot part of a quarter-quarter (40-acre subdivision), having an area of 10 acres, or multiple thereof. A quarter-quarter, say NE. ¼ NE. ¼, should be divided as follows: NE. ¼ NE. ¼ NE. ¼, NW. ¼ NE. ¼ NE. ¼, SE. ¼ NE. ¼ NE. ¼, SW. ¼ NE. ¼ NE. ¼, or any combination of such minor subdivisions, for instance, N. ½ NE. ¼ NE. ¼, but not of parts thereof, this because of the amount of survey work that will be required of the inspector to secure the identification of the lands involved as a prerequisite to their classification. This same method should govern the register or other official when ordering a hearing to determine the character of land listed by the railroad. In serving notice of mineral charges the company should be advised in the manner heretofore followed and, in addition, should be informed that it may deny or admit the character of the entire unit (quarter-quarter-quarter), or multiples, or that in the event it should desire to deny or admit the charge as to a part only of such a unit, such fact should be set out in its answer, accompanied by a request for a survey of the area in dispute, one-half of the cost of such survey to be borne by the company (departmental decision December 13, 1927, Central Pacific Railway Co., A–10079, Carson City 014233). In case of a denial in part, this office should be advised and action should then be suspended awaiting such survey and further instructions as to proceeding with the case. If the denial goes to the whole unit, the case may be proceeded with in the manner heretofore followed.

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[5] Supplemental to Circular No. 1077, p. 1194.

The same rule will apply when a division of a lot or fractional subdivision is involved, i. e., the rectangular system of public land surveys may be extended a step further into such lot or fractional subdivision, so as to break it up into its component parts, under such system of survey; but if the area, the character of which is denied by the company, is of a form other than that consequent upon the usual subdivision by platting into quarter-quarter-quarter sections, or corresponding fractional units, then a survey by metes and bounds will be necessary, the same to be paid for in accordance with departmental decision of December 13, 1927, heretofore referred to.

In making investigations the inspector should bear in mind the possibility of a segregation survey being requested, and in reporting give detailed information as to the location or place where the mineral is, etc., as far as practicable without extra trouble or expense.

As to indemnity lands, there is no occasion to modify Circular No. 1077 of July 9, 1926 (51 L. D. 487).

These instructions are issued with a view to determining the mineral character of the lands with a minimum of trouble and expense to all parties.

Very respectfully,

Thos. C. Havell,
Acting Commissioner.

Approved January 9, 1928.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 350]

Circular No. 1144

EXTENSION OF RELIEF TO INDIANS ON RAILROAD GRANT LANDS IN ARIZONA, CALIFORNIA, AND NEW MEXICO—ACT OF MARCH 10, 1928

Department of the Interior,
General Land Office,
Washington, April 12, 1928.

Registers, United States Land Offices in Arizona, California, and New Mexico.

Gentlemen: The act of Congress approved on March 4, 1913 (37 Stat. 1007), provides—

> That the Secretary of the Interior be, and he is hereby, authorized in his discretion to request of the present claimant under any railroad land grant a relinquishment or reconveyance of any lands situated within the States of Arizona, New Mexico, or California, passing under the grant, which are shown to have been occupied for five years or more by an Indian entitled to receive the tract in allotment under existing law but for the grant to the railroad company; and upon the execution and filing of such relinquishment or reconveyance the lands shall thereupon become available for allotment, and the company relinquishing or reconveying shall be entitled to select, within a period of three years after the approval of this act, and have patented to it, other vacant, nonmineral, nontimbered, surveyed public lands, of equal area and value, situated in the same State, as may be agreed upon by the Secretary of the Interior, provided that the total area of land that may be exchanged under the provisions of this act shall not exceed 3,000 acres in Arizona, 16,000 acres in New Mexico, and 5,000 acres in California.

The act of April 11, 1916 (39 Stat. 48), extended the provisions of the act of March 4, 1913, for a period of two years from and after March 4, 1916, and provided that the total area which might be exchanged thereunder should not exceed 10,000 acres in Arizona, and 25,000 acres in New Mexico.

The act of June 30, 1919 (41 Stat. 9), further extended the provisions of the basic act for a period of one year from and after March 4, 1919.

September 21, 1922 (42 Stat. 994), Congress again extended the period to March 4, 1923.

January 29, 1925 (43 Stat. 795), Congress again extended the period to March 4, 1927.

March 10, 1928, an act of Congress was approved (45 Stat. 299) which reads as follows:

> That all of the provisions of an act entitled "An act for the relief of Indians occupying railroad lands in Arizona, New Mexico, or California," approved March 4, 1913, and amended by the act of April 11, 1916, and the act of June 30, 1919, be, and the same are hereby, extended to March 4, 1931: *Provided*, That the provisions of this act shall apply only in cases where it is shown that the lands were actually occupied in good faith by Indians prior to March 4, 1913, and the applicants are otherwise entitled to receive such tracts, in allotment under existing law but for the grant to the railroad company.

You will give to this matter, without expense to the Government, the widest possible range of publicity.

Promptly transmit to this office all Indian allotment applications filed under the act of March 4, 1913, as now extended. When they are received here the procedure outlined by Circular No. 533, dated March 12, 1917 (46 L. D. 44), will be followed. These instructions will supersede those contained in Circular No. 987 of March 26, 1925 (51 L. D. 79), said Circular No. 987 being hereby revoked and recalled.

Very respectfully,

William Spry, *Commissioner*.

Approved April 12, 1928.

E. C. Finney,
First Assistant Secretary.

RECLAMATION LANDS

[Reported, 45 L. D. 385]

GENERAL RECLAMATION CIRCULAR CONTAINING REGULATIONS RELATING TO THE RECLAMATION OF ARID LANDS BY THE UNITED STATES[1]

Department of the Interior,
May 18, 1916

GENERAL INFORMATION

1. Section 3 of the act of June 17, 1902 (32 Stat. 388), provides for the withdrawal of lands from all disposition other than that provided for by said act. Lands withdrawn as susceptible of irrigation (usually referred to as withdrawn under the second form) are subject to entry under the provisions of the homestead law only, and since the passage of the act of June 25, 1910 (36 Stat. 835), are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by the Secretary of the Interior, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 686). Where settlements had been effected in good faith prior to June 25, 1910, on lands embraced within second-form withdrawals, persons showing such settlement are entitled to complete entry in the manner and within the time provided by law. The reclamation act of June 17, 1902, and acts amendatory thereof or supplementary thereto are hereinafter referred to generally as the reclamation law.

2. Under the provisions of the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (38 Stat. 686), the prohibition contained in section 5 of the act of Congress approved June 25, 1910, forbidding settlement on or entry of lands reserved for irrigation purposes prior to the approval of farm-unit plats and the announcement of the fact that water is ready to be delivered to the land, is set aside as to lands included in entries made prior to June 25, 1910, where such entries have been or may be relinquished in whole or in part.

3. Settlement and entry of such lands will be allowed subject to the provisions of the homestead law and the reclamation law in the same manner as for other lands subject to entry within reclamation projects except that the certificate of the project manager that water-right application has been made and charges deposited, which must

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[1] Amended Circulars Nos. 700, p. 1243; 716, p. 1243; 756, p. 1246; 759, p. 1246; and circular of Oct. 14, 1925, p. 1253.

be filed in the ordinary case, is not required. (See par. 5.) The lands must have been covered by a valid entry prior to June 25, 1910, and shall only be subject to entry under the provisions of the present act in cases where a relinquishment of the former entry has been or shall be filed. Registers and receivers in their action on applications to make homestead entry under the provisions of this act will be governed by the records of their office and will note on all entries allowed hereunder the homestead number and date of the relinquished entry and the fact that the new entry is allowed subject to the provisions of section 10 of the act of August 13, 1914 (38 Stat. 686).

4. Entries are permitted under the act of February 18, 1911, as amended by section 10 of the act of August 13, 1914, upon the relinquishment of an entry made prior to June 25, 1910, and the right to enter such land is not limited to one or more entries or entrymen. (Lena Hektner, 42 L. D. 462.) This act has no application where the cancellation of the entry made prior to June 25, 1910, was the result of a contest or of a relinquishment resulting from the same. (Fred V. Hook, 41 L. D. 67.) The act is also inapplicable in the case of lands withdrawn under the first form and has reference only to lands covered by second-form withdrawals. (Annie G. Parker, 40 L. D. 406.)

5. Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry, and registers and receivers will allow homestead applications for such lands, if found regular, and accompanied by a certificate of the project manager showing that water-right application has been filed and the proper water-right charges deposited. No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the project manager. Where under the reclamation law lands within the reclamation project are subject to entry notwithstanding public notice covering said lands has not yet issued, such certificate of the project manager is not required, and in such cases the application, if otherwise regular, will be received and entry allowed. The register and receiver will immediately notify the project manager of each entry allowed, stating whether the entry was allowed with or without the certificate of the project manager above referred to.

6. Registers and receivers will indorse across the face of each homestead application, when allowed under the reclamation act, the following: "This entry allowed subject to the provisions of the act of June 17, 1902 (32 Stat. 388)," and will advise each entryman of the provisions of the act, by furnishing him with a copy of this circular.

7. These entries are not subject to the commutation provisions of the homestead law, and on the determination by the Secretary of the Interior that the proposed irrigation project is practicable, the entries hitherto made and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas.

SUBDIVISION OF FARM UNITS

8. An entry may be made of part of an established farm unit, (*a*) when the remaining portion of said unit is also desired for entry simultaneously by another person and is, in the judgment of the project manager, sufficient, if carefully managed, to return to the reclamation fund the charges apportioned to the irrigable area thereof, or (*b*) can be advantageously included as part of an established farm unit, or (*c*) can in combination with existing farm units be advantageously replatted into new farm units, each sufficient, if carefully managed, to support a family and return to the reclamation fund the charges apportioned to the irrigable area of the several new farm units.

9. Where it is desired to make entry of part only of a farm unit, an application for the amendment and subdivision of such unit should be filed with the project manager. If such subdivision is rectangular and survey is not required to determine the division of the irrigable area of the farm unit as proposed to be divided, no charge will be made. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit or the division of the irrigable area, the project manager will proceed as directed in paragraph 38 of this circular. Upon such application being filed, the project manager will either approve or disapprove the same, and, if approved, proceed as directed in paragraph 39 of this circular.

10. The farm units may be as small as 10 acres where the lands are suitable for fruit raising, etc., but on most projects so far they have been fixed at from 40 to 80 acres each. These areas are announced on farm-unit plats, and public notice stating the amount of the charges and other details concerning payment is issued by the Secretary of the Interior. Until this public notice is issued it will be impossible in most respects to give definite information as to any particular tract or as to the details intended to be covered by such notice; but registers and receivers will, upon inquiry, give all general information relative to the public lands included in reclamation projects and will keep the project managers of the Reclamation Service fully informed by correspondence as to conditions affecting the same.

WITHDRAWALS AND RESTORATIONS

11. The withdrawal of these lands at first is principally for the purpose of making surveys and irrigation investigations in order to determine the feasibility of the plans for irrigation and reclamation proposed. Only a portion of the lands will be irrigated, even if the project is feasible, but it will be impossible to decide in advance of careful examination what lands may be watered, if any, and the mere fact that surveys are in progress is no indication whatever that the works will be built. It can not be determined how much water there may be available or what lands can be covered or whether the cost will be too great to justify the undertaking until the surveys and the irrigation investigations have been completed.

12. There are two classes of withdrawals authorized by the act, one commonly known as "withdrawals under the first form," which

embraces lands that may possibly be needed in the construction and maintenance of irrigation works, and the other commonly known as "withdrawals under the second form," which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works, but which may possibly be irrigated from such works.

13.[2] After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations should be rejected and denied, regardless of whether they were presented before or after the date of such withdrawal. (See John J. Maney, 35 L. D. 250.) Any withdrawal otherwise valid shall not be affected by failure to note same on tract book or otherwise follow usual procedure. (42 L. D. 318.) Lands can not be examined at the instance of individuals prior to the completion of construction to determine whether particular lands will be irrigable. (42 L. D. 8.)

14.[3] In the event any lands embraced in any unapproved or uncertified selection are needed in the construction and maintenance of any irrigation works (other than for right of way for ditches or canals reserved under act of August 30, 1890, 26 Stat. 391), under the reclamation law, the Government may cancel such selection and appropriate the lands embraced therein to such use.

15.[4] Where there are any improvements erected on such lands in good faith, payment therefor will be made upon agreement of the owner with the representative of the Government as to the value of the improvements. Where the owner of the improvements and the representative of the Government fail to agree as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the reclamation act.

16.[5] Lands withdrawn under the second form and becoming subject to entry in the manner provided by section 10 of the act of August 13, 1914, can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the reclamation law, and all applications to make selections, locations, or entries of any other kind on such lands should be rejected, regardless of whether they are presented before or after the lands are withdrawn, except that where settlement rights were acquired prior to the withdrawal and have been diligently prosecuted and the homestead law complied with, the settler will be entitled to make and complete his entry, subject to all the charges, terms, conditions, limitations, and provisions of the reclamation law. (See Sarah E. Allen, 44 L. D. 331.) No person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after withdrawal of the land from settlement and entry until the land becomes subject to settlement and entry under the provisions of the acts of June 25, 1910, February 18, 1911, and section 10 of the act of August 13, 1914, or is restored to the public domain.

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[2] See amendment, p. 1246.

[3] See amendment, p. 1246

[4] See revocation, p. 1246.

[5] See amendment, p. 1246.

17. Withdrawals made under either of these forms do not defeat or adversely affect any valid entry, location, or selection which segregated and withheld the lands embraced therein from other forms of appropriation at the date of such withdrawal; and all entries, selections, or locations of that character should be permitted to proceed to patent or certification upon due proof of compliance with the law in the same manner and to the same extent to which they would have proceeded had such withdrawal not been made. All lands, however, taken up under any of the land laws of the United States subsequent to October 2, 1888, are subject to right of way for ditches or canals constructed by authority of the United States (act of Aug. 30, 1890, 26 Stat. 391; circular approved by department July 25, 1903[a]). All entries made upon the lands referred to are subject to the following proviso of the act cited:

> That in all patents for lands hereafter taken up under any of the land laws of the United States, or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

18. Should a homestead entry embrace land that is needed in whole or in part for purposes contemplated by said proviso in the act of August 30, 1890, the land would be taken for such purpose, and the entryman would have no claim against the United States for the same.

19. All withdrawals become effective on the date upon which they are ordered by the Secretary of the Interior, and all orders for restorations on the date they are received in the local land office unless otherwise specified in the order. (George B. Pratt et al., 38 L. D. 146.)

20. Upon the cancellation of an entry covering lands embraced within a withdrawal under the reclamation act such withdrawal becomes effective as to such lands without further order. (See Cornelius J. MacNamara, 33 L. D. 520.) Such lands under first-form withdrawal can not, therefore, so long as they remain so withdrawn, be entered or otherwise appropriated, either by a successful contestant or any other person.

21. Where the Secretary of the Interior by the approval of farm-unit plats has determined, or may determine, that the lands designated thereon are irrigable, the filing of such plats in the General Land Office and in the local land offices is to be regarded as equivalent to an order withdrawing such lands under the second form, and as an order changing to the second form any withdrawals of the first form then effective as to any such tracts. This applies to all areas shown on the farm-unit plats as subject to entry under the provisions of the reclamation law or as subject to the filing of water-right applications, and to all farm units to which the Secretary has announced that water is ready to be delivered. Upon receipt of such plats appropriate notations of the change of form of withdrawal are to be made in accordance therewith upon the records of the General Land Office and of the local land offices.

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[a] The circular approved July 25, 1903 contains recommendations addressed to the Secretary of the Interior by the Acting Director of the Geological Survey. It is not carried in this publication.

22. Inasmuch as every entry made under the reclamation law is subject to conformation to an established farm unit, improvements placed upon the different subdivisions by the entryman prior to such conformation are at his risk. (Jerome M. Higman, 37 L. D. 718.) They should be confined to one legal subdivision until the entry is conformed. In readjusting such an entry the Secretary is not required to confine the farm unit to the limits of the entry, but may combine any legal subdivision thereof with a contiguous tract lying outside of the entry, so as to equalize in value the several farm units. (Idem.) The act of June 27, 1906, authorizes the Secretary of the Interior to fix a lesser area than 40 acres as a farm unit when, " by reason of market conditions and special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than 40 acres may be sufficient for the support of a family " or when necessary " in order to provide for practical and economical irrigation."

ADDITIONAL ENTRIES

23.[6] A person who has made homestead entry for any area within a reclamation project can not make an additional homestead entry for lands outside of a project, nor for lands within a project except as provided in the following paragraph. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project. (38 L. D. 58.)

24.[7] Where, however, the first or original homestead entry was made subject to the restrictions and conditions of the reclamation act, any entry additional thereto would be likewise subject to the same restrictions and conditions, and in such cases additional entries may be allowed within reclamation projects under acts authorizing additional entries, except where farm units have been established prior to the filing of the applications. Both entries so allowed are subject to the same adjustment to one farm unit as if the entire tract had been included in the first entry. (Henry W. Williamson, 38 L. D. 233.)

ENTRIES UNDER ACT OF MARCH 4, 1915

25. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and an affidavit by the applicant showing the facts upon which he claims to be entitled to the provisions of this act. The showing filed by the applicant must be immediately transmitted to the project manager of the Reclamation Service for his report and recommendation thereon, and upon the receipt thereof the register and receiver will transmit all the papers to the General Land Office with their recommendation thereon. The project manager will forward two

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[6] See amendment, p. 1246.

[7] See revocation, p. 1246.

copies of his report to the chief of construction. The register and receiver will indorse on the face of each such application the fact that it is under the provisions of the act of March 4, 1915 (38 Stat. 1215).

26. Such applications will be given current numbers of the land-office series, and the proper fee and commissions will be collected in each case.

27. This act permits a new entry only where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

28. In order that there may be uniformity in the administration of the act of March 4, 1915, no applications thereunder will be allowed by local officers on their own initiative, but all will be forwarded to the General Land Office for consideration.

CONTESTS

29. An entry embracing lands included within a first or second form reclamation withdrawal, whether such entry was made before or after the date of such withdrawal, may be contested and canceled because of entryman's failure to comply with the law or for any other sufficient reason, except that for failure to pay the construction charges or charges for operation and maintenance no contest will lie, and any contestant who secures the cancellation of such entry and pays the land-office fees occasioned by his contest will be awarded a preferred right of making entry. Should the land embraced in the contested entry be within a first-form withdrawal at time of successful termination of the contest the preferred right may prove futile, for it can not be exercised as long as the land remains so withdrawn, but should the lands involved be restored to the public domain or a farm-unit plat be approved for the lands and announcement made that water is ready to be delivered, the preference right may be exercised at any time within 30 days from notice of the restoration or the establishment of farm units. Should the land be within a second-form withdrawal, the successful contestant can not be allowed to exercise his preference right of entry prior to the time when the Secretary shall have established the unit of acreage and announced the fact that water is ready to be delivered to the land in said farm unit or some part thereof, but when the farm unit is established and water available as stated, he may make entry under the terms of the reclamation law. If, however, the land at any time be released from all forms of withdrawal, he may enter as in other cases made and provided. It should be the duty, however, of such contestant to keep

the local officers advised respecting his residence to which notice may be sent him of his preference right of entry in event of successful contest, when the land is subject to entry, and a notice mailed to his address, shown by the records of the local land office at the time of the mailing of the notice of preference right, will be held to meet the requirements of the act of May 14, 1880 (21 Stat. 140). No contest can be allowed, however, against any qualified entryman who prior to June 25, 1910, made bona fide entry upon lands proposed to be irrigated and who established residence in good faith upon the lands entered by him for failure to maintain residence or to make improvements upon his land prior to the time when water is available for its irrigation.

30. Under these regulations the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(*a*) Where the entry was made on or after June 25, 1910.

(*b*) Where the entry was made prior to June 25, 1910, and it is alleged that the entryman failed to establish residence in good faith upon the lands entered by him.

(*c*) Where the entry was made prior to June 25, 1910, and a period of 90 days has elapsed since the issuance of public notice under section 4 of the reclamation act of June 17, 1902 (32 Stat. 388), fixing the date when water will be available for irrigation of the land.

(*d*) Where the entry was made prior to June 25, 1910, for any causes other than "failure to maintain residence or make improvements upon the land prior to the time when water is available."

LEAVE OF ABSENCE

31. When homestead entrymen within irrigation projects file in the local land office applications for leave of absence under the provisions of the act of June 25, 1910, the register and receiver will make proper notation of the same on their records and at once, by special letter, forward the application, together with their recommendation thereon, to the General Land Office for action.

32. These applications for leave of absence should be in the form of an affidavit duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirement of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof. The statement regarding the availability of water for irrigation must be corroborated by certificate of the project manager, to be filed with the application for leave.

33. When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such

abandonment and the restoration to the public domain of the lands embraced in the entry.

34. Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment, and by the necessary implication of the act the period within which the entryman is required to submit final proof will be extended and the entry will not be subject to cancellation for failure to submit proof until the expiration of the period allowed in which to submit final proof, exclusive of the period for which leave of absence may be granted. Under the provisions of the act of April 30, 1912 (37 Stat. 105), no qualified entryman for lands within a reclamation project whose entry was made prior to June 25, 1910, and who established residence in good faith upon the lands so entered shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time public notice is issued fixing the water-right charges and announcing that water is available for the irrigation of the land embraced in his entry. Within 90 days after the issuance of public notice under section 4 of the act of June 17, 1902 (32 Stat. 388), fixing the water-right charges and announcing the date when water will be available for irrigation, the entryman must file water-right application for the irrigable land in his entry in conformity with the public notice and farm-unit plat, and must file in the local land office an affidavit showing that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof.

ASSIGNMENTS

35. Under the provisions of the act of June 23, 1910 (36 Stat. 592), persons who have made or may make homestead entries subject to the reclamation law may assign their entries in their entirety at any time after filing in the local land office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act also provides for the assignment of homestead entries in part, but such assignments, if made after farm units are established, must conform thereto, except as hereinafter provided. (See pars. 36 to 39.)

36. In cases where the entry involves two or more farm units, the entryman may file an election as to which farm unit he will retain, and he may assign and transfer to a qualified assignee any farm unit or farm units entirely embraced within the original entry. He may also assign parts of farm units included in his entry, provided the assignee has an entry covering or obtains an assignment of the remainder of such unit. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

37. Where it is desired to assign a part of an established farm unit, an application for the amendment and subdivision of such unit should be filed with the project manager. The assignment, with

accompanying affidavits of the assignee and assignor, must also be filed with the project manager for his consideration.

38. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

39. When the plats describing the amended farm units are approved by the project manager, he will forward copy of the amendatory plat, in duplicate, together with the assignment and accompanying affidavits, to the local land office, where one copy of the amendatory plat will be retained, and one copy will be forwarded by the local land officers to the General Land Office, together with the assignment and accompanying affidavits. A copy of the amendatory plat should also be at once forwarded by the project manager to the director's office at Washington, D. C., to be formally approved in the usual manner by authority of the Secretary.

40. No assignment of a homestead entry or any part thereof shall be accepted by the Commissioner of the General Land Office, or recognized as valid for any purpose, until after the filing in the local land office of the instruments required by paragraph 41.

41.[8] Assignments under this act are expressly made "subject to the limitations, charges, terms, and conditions of the reclamation act," and inasmuch as the law limits the right of entry to one farm unit and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges each assignor must present a showing in the form of an affidavit to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing in the form of an affidavit that he does not own or hold and is not claiming any other farm unit or entry under the reclamation law upon which all installments of construction or building and betterment charges have not been paid in full and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior. If the assignee is a woman, it must be shown whether she is married or single, and if a married woman, it must be shown that the assignment is purchased with her own separate money, in which her husband has no interest or claim (39 L. D. 504, and Sadie A. Hawley, 43 L. D. 364). These affidavits must be accompanied by evidence of the conveyance of the land, as indicated in paragraph 42, and a further showing in the form of a certificate of the project manager that water-right application therefor is not yet receivable, or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. The affidavits and certificates above described should be in the following form, inserting the proper names, descriptions, etc., in the places indicated:

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[8] See amendment, p. 1243.

CERTIFICATES OF PROJECT MANAGER

This is to certify that the project manager of the ______ project, State of ______, has not been authorized to receive water-right application for the following-described lands under said project, or any part thereof, to wit: ______ ______ ______.

Dated ______ ____, 19__.

______ ______,

Project Manager, ______ *Project, State of* ______.

Or—

This is to certify that ______ ______, post-office address ______, ______, did on the ____ day of ______, 19__, file in the office of the project manager, for acceptance, a water-right application in due form for the irrigable area in the following-described tract of land under said project, to wit: ______ ______ ______

Dated ______ ____, 19__.

______ ______,

Project Manager, ______ *Project, State of* ______.

AFFIDAVIT OF ASSIGNOR

______ ______, of ______, being duly sworn, deposes and says that h__ assignment under the act of June 23, 1910 (36 Stat. 592), of farm unit ______, or the ______ of section ____, township ____, range ____, ______ meridian, is a bona fide and absolute sale of all h__ interest in and to the land and rights therein described, and that the assignee takes and holds same, as far as affiant is concerned, absolutely and free from any claim, interest, or demand on the part of the affiant other than ______ ______ ______. (If mortgaged, so state.)

______ ______.

Subscribed and sworn to before me this ____ day of ______, 19__.
[SEAL.]

______ ______,

______ ______.
(Official character)

AFFIDAVIT OF ASSIGNEE

______ ______, of ______, being duly sworn, deposes and says that __he is the assignee of ______ under the act of June 23, 1910 (36 Stat. 592), for farm unit ______, or the ______ ______ ______, section ____, township ____, range ____, ______ meridian; that __he is a duly qualified assignee for the reason that __he is over 21 years of age, that __he does not own or hold, and is not claiming any other farm unit or entry under the reclamation act of June 17, 1902 (32 Stat. 388), or acts amendatory thereof or supplemental thereto, upon which payment in full of all installments of construction or building and betterment charges has not been made, and that the water right for the lands above described, together with all water rights or lands held by h__ under the reclamation law, do not exceed 160 acres of irrigable land; that this assignment is accepted subject to any unsatisfied mortgage against the land or any part thereof duly filed and recorded in the local land office; that she is __married;[9] that this assignment is purchased with her own separate money in which her husband has no interest or claim;[10] and that __he has no agreement or understanding whereby any interest therein will inure to the benefit of another. Affiant further says that __he has acquired the entire interest of the assignor in the tract assigned and does not hold same as trustee or in any other manner for or on behalf of the assignor.

______ ______.

Subscribed and sworn to before me this ____ day of ______, 191__.
[SEAL.]

______ ______,

______ ______.
(Official character)

42. Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in

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[9] To be filled in by all female assignees.
[10] Strike out where assignee is not a married woman.

which the land is located, but a quitclaim or warranty deed is preferred. The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record will be accepted. Where the original instrument of assignment is presented to an officer having an official impression seal, a copy of the instrument certified by such officer under his seal will be accepted if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the internal revenue law.

43.[11] Assignments made and filed in accordance with these regulations must be noted on the local land office records and at once forwarded to the General Land Office for immediate consideration. Where an assignment which does not fully comply with the above regulations is presented to the local land office the register and receiver will reject same, subject to the right of appeal to the Commissioner of the General Land Office in accordance with the rules of practice. Upon the approval of an assignment, the assignee will at the proper time make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

MORTGAGES

44. Mortgagees of lands embraced in homestead or desert-land entries within reclamation projects may file in the local land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project manager in case of any lands, whether or not water-right application has been filed under the provisions of the act of June 17, 1902 (32 Stat. 388), including homestead entries, desert-land entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

45. Every such notice of mortgage interest filed as provided in the preceding paragraph must be forthwith noted upon the records of the project manager and of the local land office, and be promptly reported to the Director of the Reclamation Service and to the Commissioner of the General Land Office, where like notations will be made. Relinquishment of a homestead or desert-land entry or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat. 592), nor an assign-

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[11] See amendment, p. 1253.

ment of a mortgaged desert-land entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

46. If such mortgagee buys in the lands at foreclosure sale, such mortgagee-purchaser, whether a nonresident or corporation, may, at any time within one year after the end of the statutory period of redemption, if there be such statutory period, and if not, at any time within one year after such foreclosure sale, make proof of cultivation and reclamation of the land under section 1 of the act of August 9, 1912 (37 Stat. 265), and receive final water-right certificate, provided such mortgage-purchaser is otherwise qualified so to do. Water will be furnished said land, and no steps will be taken to cancel the water-right application on account of the holdings by the same mortgagee-purchaser of lands in excess of 160 acres, or the limit per single ownership of private land as fixed by the Secretary of the Interior for which a water right may be purchased, until two years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of the foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of such mortgagee-purchaser. To secure the benefits hereof the mortgagee purchasing the land at foreclosure sale must give notice thereof to the register of the local land office and to the officer in charge of the project within 60 days after such purchase.

CANCELLATION

47. All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make any two payments when due, or to reclaim the land as required by law, will render the entry subject to cancellation and the money paid subject to forfeiture, whether water-right application has been made or not. Upon receipt of a statement from the Director of the Reclamation Service that two of such payments remain due and unpaid, after proper service upon the entryman and upon the mortgagee, if any such there be of record, of the notice required by paragraph 111 of this circular, the date and manner of service being stated, the entry will, without further notice, be canceled by the Commissioner of the General Land Office.

WIDOWS AND HEIRS OF ENTRYMEN

48. The widows or heirs of persons who make entries under the reclamation law will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim the land as required by the reclamation law, and make payment of all unpaid charges when due.

49. Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L. D. 332.) If in such case the land has been divided into farm units, the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will be required to conform the entry to one farm unit in the same manner as an original entryman by amending the former entry, relinquishing to the United States or assigning to a duly qualified assignee the lands embraced in the entry in excess of the farm unit he elects to retain. The purchaser and his assignees take, subject to the payment of the water-right charges authorized by the reclamation law and regulations thereunder, and must reclaim the land as required by said law, but are not required otherwise to comply with the homestead law. Should the land not be sold for the benefit of the minor heirs, but retained by them, they will be required to show compliance with the requirements of law as to reclamation and payment of the charges.

FINAL PROOFS, CERTIFICATES, AND PATENTS

50. Where the tract covered by a homestead or desert-land entry has been withdrawn under either the first or the second form after the date of said entry, the register and receiver are directed to immediately furnish the project manager a copy of any notice of intention to submit proof thereon, this being in addition to the copy furnished in all cases to the chief of field division. The Reclamation Service may file such papers as are thought proper bearing on the question whether there has been such compliance with the law on claimant's part as entitles him to final certificate and patent on the entry. Final certificate will, in the absence of other objection, issue pursuant to the proof, as in other cases, if the testimony appears to warrant such action, and no papers have been filed by the Reclamation Service conducing to disprove the testimony; in the event of the filing of such papers, however, the record will be forwarded to the General Land Office for consideration.

51. Where an entry has been made after withdrawal of the tract under the second form, a copy of the notice of intention to submit proof will be sent to the project manager; in such cases the register and receiver will forward the proof, if found to be regular, to the General Land Office without issuance of final certificate, unless there has been submitted a final affidavit, duly corroborated by two witnesses and approved by the project manager, showing compliance with the reclamation act as to payment of all charges due to date and reclamation of one-half of the irrigable area in the entry, as provided for in paragraph 59. If such affidavit showing reclamation and payment of charges is filed and the final proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found on examination by the local land officers to be sufficient, they will issue final certificate on the case as hereinafter provided.

52. If any final proof offered under this law be irregular or insufficient, the register and receiver will reject it and allow the entryman

the usual right of appeal, and if the General Land Office finds any proof forwarded to be insufficient or defective in any respect, whether or not final certificate has issued on the same, the final proof or certificate may be held for rejection or cancellation and the entryman will be notified of that fact, or he may be given an opportunity to cure the defect or to present acceptable proof.

53. The registers and receives are directed to notify in writing every person who makes final proof on a homestead entry which is subject to the limitations and conditions of the reclamation law embracing land included in an approved farm-unit plat where the entry does not conform to an established farm unit and where two years have elapsed since the approval of such farm-unit plat that 30 days from notice is allowed the entryman to elect the farm unit he desires to retain and to file an assignment of the remainder of his entry under the act of June 23, 1910 (36 Stat. 592), in default of which the entry will be conformed by the General Land Office and canceled as to the portion not assigned.

54. All persons who make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation law will be required to comply fully with the homestead law as to residence, cultivation, and improvement of the lands, except that where entries were made prior to the issuance of public notice announcing the availability of water for the irrigation of the land and prior to June 25, 1910, in which case, under the departmental decision in the case of ex parte J. H. Haynes (40 L. D. 291), and under the provisions of the act of April 30, 1912 (37 Stat. 105), the submission of final proof is not required within the period during which proof must be submitted under the ordinary provisions of the homestead law.

55. Soldiers and sailors of the War of the Rebellion, the Spanish-American War, or the Philippine insurrection, and their widows and minor orphan children who are entitled to claim credit for the period of the soldier's or sailor's service under the homestead laws, will be allowed to claim credit in connection with entries made under the reclamation law, but will not be entitled to receive final certificate or patent until the water-right charges due have been paid and the requirements as to reclamation have been met.

56. Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead law and have submitted proof which has been found satisfactory thereunder by the General Land Office, but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units have not been established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry, as finally adjusted to an approved farm unit, and payment of all charges due under the public notices and orders issued in pursuance of the reclamation law.

57. The act of August 9, 1912 (37 Stat. 265), expressly requires reclamation of one-half of the irrigable area of the entry as finally adjusted before final certificate and patents may issue thereunder, and, therefore, the act does not authorize the issuance of final cer-

tificate on homestead entries made subject to the reclamation law, prior to the establishment by the Secretary of the Interior of farm units, and the conformation of the entry to an approved unit, for the reason that prior to that time the entry is still subject to adjustment in area, and it can not be determined what area must be ultimately reclaimed under the provisions of the act.

58. Upon the tendering to registers and receivers of homestead proof on entries subject to the reclamation law, they will accept only the testimony fees for " reducing testimony to writing and examining and approving testimony," and will no accept final commissions payable under such entries until proof is received of compliance with the requirements of the reclamation law as to reclamation and payment of the charges which have become due.

59. Homestead and desert-land entrymen, in making proof of compliance with the reclamation law as to reclamation and payment of reclamation charges due, must submit an affidavit, duly corroborated by two witnesses, in duplicate, to the project manager showing these facts. Thereupon it shall be the duty of the project manager to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Director of the Reclamation Service and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the register and receiver of the land district in which the land is situate, with his report or findings thereon, and such officers will thereupon in turn transmit the showing to the General Land Office for its action. If the proof be rejected by the Commissioner of the General Land Office, appeal will lie to the Secretary of the Interior, as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water charges due on account thereof have been paid and that reclamation has been accomplished as required by the reclamation law. Where prior to issuance of public notice water has been furnished on a water-rental basis to reclamation entrymen or others, and by means whereof reclamation sufficient to obtain patent or water-right certificate under the act of August 9, 1912, has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen or others desiring to obtain patent or water-right certificate under that act upon the form of application approved by the department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary. In such cases reclamation homestead entries must be conformed to farm units as established by the Secretary of the Interior. If not theretofore created, farm units may be established upon application.

60. To comply with the provisions of the reclamation law as to reclamation and cultivation, the land must be cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least two years next preceding the date of approval by the project manager of proof of reclamation, except as prevented by hailstorm or flooding, satisfactory crops must be grown on at least one-half of the irrigable area thereof. A satisfactory crop during any year shall be any one of the following: (*a*) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (*b*) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or (*c*) a season's growth of orchard trees or vines of which 75 per cent shall be in a thrifty condition.

61. As to all lands subject to the reclamation extension act of August 13, 1914 (38 Stat. 686), at least one-quarter of the irrigable area thereof shall be so reclaimed within three full irrigation seasons after entry or making water-right application, and at least one-half of the irrigable area thereof so reclaimed within five full irrigation seasons after entry or making water-right application, except that the first full irrigation season affecting such land for which water-right application shall have been made prior to May 3, 1915, shall be the irrigation season of 1915. All land thus reclaimed and cultivated shall continue to be so reclaimed and cultivated until after final proof is made and accepted or patent or final water-right certificate issued. Failure to so reclaim lands subject to the said reclamation extension act renders the entry, or, in case of private land, the water-right application therefor, subject to cancellation.

62. Upon receipt of proof of reclamation and payment of water-right charges as provided in the acts of August 9, 1912, and August 26, 1912, in case of homestead entries under the reclamation law, on ceded Indian lands entered under the reclamation act, and in case of desert-land entries within the exterior limits of any land withdrawal or irrigation project under the reclamation act, if final proof of compliance with the homestead or desert-land law, as the case may be, has been previously submitted and has been accepted by the Commissioner of the General Land Office, or if such final proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation upon examination by the local land officers, the register and receiver will issue final certificate on the entry, proceeding in the usual manner, and forward the same with the proof of reclamation and payments to the General Land Office. The final certificate so issued must be stamped by the local land officers across the face of each certificate when issued as follows: "Subject to lien, under section 2, act of August 9, 1912 (37 Stat. 265)." Upon receipt of such case in the General Land Office, if found to be regular, it will be approved for patent under said act of August 9, 1912, or August 26, 1912, and patent issued reserving the lien as in said acts provided.

63. Upon receipt of proof of reclamation and payment of water-right charges, as provided in the act of August 9, 1912, in the case of homestead entries, other than those under the reclamation act, where a water-right application has been filed by the entryman, and the register and receiver have been notified by the project manager of the acceptance of such application, if final proof has been accepted on the entry by the Commissioner of the General Land Office, or final proof is submitted at the time of the receipt of such reclamation proof and is found to be sufficient on examination by the local land officers, the register and receiver will issue final certificate of compliance with the homestead law, proceeding in the usual manner, and forward such final certificate, with proof of reclamation, to the General Land Office. When the case is received in the General Land Office and is found to be regular, it will be approved for patent and final water-right certificate will be issued by the project manager, reserving a lien to the Government and its successor for the charges due or to become due.

64. The execution of final water-right certificate has the effect of vesting in the water-right applicant absolute title to the water right involved, subject in case of partial payment to a lien for the payment of all sums still due, and in all cases to payment of the annual charges for operation and maintenance; hence the necessity for extreme care in the preparation and issuance of these instruments.

65. The certificate should not be executed until the following notation (record completed ——) has been initialed by a responsible employee who shall have ascertained from a careful examination of the project records that full compliance has been made with the requirements of the law such as to entitle the applicant to the issuance of such certificate.

66. Upon the execution of the certificate, and before delivery to the water-right applicant, it should be recorded in the bound volume which has been provided for that purpose, care being exercised to make the record an exact copy of the original certificate. The person preparing the certificate and recording the same should initial the certificate and record, and will be held responsible for absolute accuracy in this respect; and to insure this the original should be checked with the record thereof in the bound volume. The original must not be delivered until the signature has been copied on the record.

67. It will be necessary to keep a complete index of final water-right certificates issued. A double card index should be made for this purpose, one under the names of the parties and the other by land descriptions.

68. These record books are the official record of the United States in respect of water rights under reclamation projects and serve a purpose similar to that of the records of county recorders or of the records of the Recorder of Patents in the General Land Office. Certified copies of the record will be frequently called for, and it must be absolutely accurate, every precaution being taken to this end.

69. When final water-right certificate has been issued and recorded the fact should be noted on the back of the water-right application forming the basis thereof, citing the volume and page where recorded.

70. Final water-right certificates are not required for and will not be issued for (*a*) lands entered under the reclamation act; (*b*) desert-land entries for which water-right application has been made; (*c*) entries of ceded Indian lands, whether patents for such lands are issued under acts of August 9, 1912, or otherwise, but patent in each of such cases carries with it the water right to which the lands patented are entitled. In all other cases, that is, in cases of lands in private ownership, and in cases of homesteads where entry was made prior to the reclamation withdrawal, final water-right certificate will issue as herein provided.

71. In case of lands in private ownership and homestead entries made prior to reclamation withdrawal, reclamation is required to be shown before any final water-right certificate is issued upon a water-right application made for such lands under the reclamation law. Further, before issuance of such a certificate under the act of August 9, 1912 (37 Stat. 265), on account of any lands so held, evidence must be filed satisfactorily showing that the applicant for water right has an unencumbered title to the land, or, where encumbered, the consent of the encumbrancers must be furnished in such form that the lien to be given the Government to secure the deferred payments on account of the water right shall, as contemplated by the law, constitute a prior lien upon the land. Upon the filing of such proofs with the project manager and the payment of all reclamation charges then due, he will issue a water-right certificate to the applicant which shall expressly reserve to the United States a prior lien on the land upon which a water right is certified, together with all water rights appurtenant or belonging thereto, superior to all other liens, claims, or demands whatsoever, to secure the payment of all sums due or to become due, to the United States or its successors. The project manager will forward all papers, including a copy of the certificate, to the Director of the Reclamation Service.

72. The Director of the Reclamation Service will, upon the full payment of all construction or building and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the final water-right certificate or patent under the act of August 9, 1912 (37 Stat. 265).

WATER RIGHTS

73. In pursuance of the authority contained in the act of August 9, 1912 (37 Stat. 265), a special fiscal agent of the Reclamation Service has been designated to receive payment of the construction or building and betterment charges and the charges for operation and maintenance payable on account of the lands within each project. All administrative matters regarding the filing of original water-right applications and all actions regarding water-right applications heretofore filed shall be carried on by the officer of the Reclamation Service in charge of the project, herein designated as project manager. Appeals from his action may be taken in accordance with paragraphs 148 to 153, inclusive.

74.[12] Notice of all action in the local land office or in the General Land Office regarding any entry for which water-right application has been made, or may be made, whether subject to the reclamation law or not, shall be given immediately by the register and receiver to the project manager by the forwarding of copy of decision in the case. The project manager shall advise the register and receiver of all action regarding any water-right application or contract by the Reclamation Service affecting the status or validity of the homestead or desert-land entry covering the lands. Among the several actions of which the register and receiver are especially directed to notify the project manager are:

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[12] See amendment, p. 1243.

1. Allowance of entries.
2. Conformation of entries to farm units.
3. Acceptance of final proof.
4. Issuance of final certificate.
5. Issuance of patent.
6. Acceptance or rejection of assignments under the act of June 23, 1910 (36 Stat. 592).
7. Contests against entries, granting of leave of absence, death or disability of entryman, or any other actions materially affecting the entry.

75. The control of operation of all sublaterals constructed or acquired in connection with projects under the reclamation law is retained by the Secretary of the Interior to such extent as may be necessary or reasonable to assure to the water users served therefrom the full use of the water to which they are entitled. (See 37 L. D. 468.)

WATER RIGHTS FOR LANDS IN PRIVATE OWNERSHIP

76.[13] Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the reclamation law, but water-right contracts may not be held for more than 160 acres by any one landowner, and such landowner must be an actual bona fide resident on such land or occupant thereof residing in the neighborhood at the time of making such water-right contract. The Secretary of the Interior has fixed a limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied, depending on local conditions. After water-right application has been made and accepted (which constitutes a water-right contract), the applicant is not required to continue his residence on the land or in the neighborhood. A landowner may, however, be the purchaser of the use of water for more than one tract in the prescribed neighborhood at one time, provided that the aggregate area of all the tracts involved does not exceed the maximum limit established by the Secretary of the Interior, nor the limit of 160 acres fixed by the reclamation law; and a landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same, together with the water right, can make other and successive contracts for other irrigable lands owned or acquired by him. Holders of more than 160 acres of irrigable land, or more than the limit of area per single ownership of private land as fixed by the Secretary of the Interior, for which water may be purchased within the reclamation project, if such a limit has been fixed, must sell or dispose of all in excess of that area before water-right application will be accepted from such holders. (See pars. 91 and 99.) If the holder of a greater area desires, he can subscribe for stock in the local water users' association (if there be one) for his entire holding, executing a trust deed, giving the association power to ultimately sell the excess area to actual settlers who are qualified to comply with the reclamation law, unless the land has been sold by the owner when the Government is ready to furnish water thereon, or provide for the disposal of such excess holdings in some manner approved by the Secretary of the Interior. Holders of land in private ownership who have made and had accepted water-right application for their holdings may receive water for lands in excess of the area hereinabove stated, in case such excess lands have had water-right application made and accepted therefor, and have been acquired by descent, will, or by foreclosure of any lien; in which case said excess lands may be held for two years and no longer after their acquisition, without in any manner militating against the right of the holder to be furnished water under the reclamation law.

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[13] See amendment, p. 1243.

77. Where private lands are held under contract of purchase, title remaining in the vendor, and the purchaser makes water-right application therefor, making one or more payments on account of the construction or building charge, and subsequently the vendor cancels the contract of purchase because of default in payments or for other default of the purchaser, the land resumes its status as if no contract of purchase had been entered into and no water-right application had been made. All payments made by the contract purchaser on account of the water-right application are forfeited to the United States. If the tract is resold to new purchasers, whether by deed or by contract of purchase, such new purchaser must make a new water-right application under such regulations as are in force at the time.

78. A different result occurs where the contract purchaser sells his interest under the contract to another and transfers in writing credit for payments made by him and this other and the vendor enter into a new arrangement whereby this other takes a new contract of purchase from the vendor. In this case the new contract purchaser is the successor in interest of the original contract purchaser and succeeds to the benefits of any payments made by the original contractor on his water-right application. If, therefore, in such a case a new water-right application is required because of any regulations applicable to the case, credits should be allowed on the new application to the extent of the payments made by the original contract purchaser.

79. The purpose of the reclamation law is to secure the reclamation of arid or semiarid lands and to render them productive, and section 8 declares that the right to the use of water acquired under this act shall be appurtenant to the land irrigated and that "beneficial use shall be the basis, the measure, and the limit of the right." There can be no beneficial use of water for irrigation until it is actually applied to reclamation of the land. The final and only conclusive test of reclamation is production. This does not necessarily mean the maturing of a crop, but does mean the securing of actual growth of a crop. The requirement as to reclamation imposed upon lands under homestead entries applies likewise to lands in private owner-

ship and land entered prior to the withdrawal—namely, that the landowner shall reclaim his land as required by law, and no right to the use of water will permnaently attach until such reclamation has been shown. (See 37 L. D. 468, and par. 60.)

80. The provisions of section 5 of the act of June 17, 1902, relative to cancellation of entries with forfeiture of rights for failure to make any two payments when due state the rule to govern all who receive water under any project, and accordingly a failure on the part of any water-right applicant to make any two payments when due shall render his water-right application subject to cancellation with the forfeiture of all rights under the reclamation law as well as of any moneys already paid to or for the use of the United States upon any water right sought to be acquired under said law. (37 L. D. 468.)

VESTED WATER RIGHTS

81. The provision of section 5 of the act of June 17, 1902 (32 Stat. 388), limiting the area for which the use of water may be sold, does not prevent the recognition of a vested right for a larger area and protection of the same by allowing the continued flowing of the water covered by the right through the works constructed by the Government under appropriate regulations and charges.

WATER-RIGHT APPLICATION

82. The department has adopted two forms of applications for water rights, viz, Form A, for homestead entries under the reclamation law; Form B, for lands other than homestead entries under the reclamation law embraced within a project. Copies of these forms have been furnished project managers, and they will be used in all applications for water rights on all reclamation projects.

83. Under the act of April 30, 1912 (37 Stat. 105), a reclamation homestead entry made prior to June 25, 1910, where a residence was established in good faith, is not subject to contest for failure of the entryman to maintain residence or make improvements upon the land prior to the time when water is available for the irrigation of the lands embraced within the entry under public notice. The entryman is required within 90 days after public notice has issued to file a water-right application. (See par. 29.)

84. Upon notice issued by the Secretary of the Interior that the Government is ready to receive applications for water right for described lands under a particular project, all persons who have made entries of such lands under the provisions of the reclamation law will be required to file application for water rights on Form A for the number of acres of irrigable land in the farm unit entered, as shown by the plats of farm units approved by the Secretary of the Interior. And any person settled on such lands or intending to make entry of any such lands may file application for water rights on Form A for the number of acres of irrigable land in the farm unit settled on or intended to be entered, as shown by such farm-unit plats.

85. Where such settler or other person makes a water-right application before initiating entry for the lands for which such water-right application is made, the water-right application will be re-

ceived by the project manager, and the amount due thereon as shown by the public notices and orders collected by the special fiscal agent of the Reclamation Service. The water-right application will be retained by the project manager until entry is made, or if entry is not perfected by the applicant within 30 days the application shall be indorsed "rejected," with the date thereof, and the amount collected returned to the applicant, except in case water shall have been furnished such applicant under the application, in which case only the amount collected on account of the construction or building and betterment charges will be returned. The amount collected for operation and maintenance will be retained by the special fiscal agent as payment to the United States for the service rendered in furnishing water. If entry is made the entryman will be required to exhibit to the project manager his land-office receipt. The project manager will indorse on the water-right application the number, date, and land-office serial number of the entry and take the action indicated in the following paragraph.

86. All applications on Form A must be filed in the project office of the United States Reclamation Service in person or by mail, accompanied by two complete copies and the amount due thereon as shown by the public notices and orders. The project manager will carefully examine the original application, and if regularly and properly made out accept the same and indorse thereon his acceptance. He will see that the copies correspond with the original and that the entry number, date, etc., are properly given, and will immediately transmit one copy to the director and give the second copy to the applicant, with the special fiscal agent's receipt for the amount collected. The original application will be retained in the project office of the Reclamation Service.

87. Upon the issuance of the public notice private landowners and entrymen whose entries were made prior to withdrawal may, in like manner, apply to the project office of the United States Reclamation Service, on Form B for water rights for tracts not containing more than 160 acres of irrigable land, according to the approved plats, unless a smaller limit has been fixed as to lands in private ownership by the Secretary of the Interior.

88. Each application on Form B must contain a statement as to the distance of the applicant's residence from the land for which a water right is desired.

89. If a greater distance than that fixed for the project is shown in any application, the case should be reported to the director through the chief of construction for special consideration upon the facts shown. If the applicant is an actual bona fide resident on the land for which water-right application is made, the clause in parentheses of Form B, regarding residence elsewhere, must be stricken out.

90. The applicant on Form B must state accurately the nature of his interest in the land. If this interest is such that it can not be perfected into a fee simple title at or before the time when the last annual installment for water right is due, the application must be rejected.

91. Form B, used by owners of private land and entrymen whose entries were made prior to the withdrawal of the land within reclamation projects for entering into contracts with the United States

for the purchase of a water right, must be signed, sealed, and acknowledged before a duly authorized officer in the manner provided by local law. A space is provided on the blank for evidence of the acknowledgment, which should be in exact conformity to that prescribed for mortgages by the law of the State in which the lands covered by the contract lie. When so executed the original must be filed in the project office of the United States Reclamation Service either in person or by mail, together with four complete copies, and must be accompanied by the amount of the charges for recording the same in the county records. The application must cover all the irrigable land of the applicant in the project. (See pars. 76 and 99.) If the applicant owns more than the limit of irrigable area fixed for land in private ownership, he must make disposition of all the irrigable lands not covered by his application, as indicated in paragraph 76, before the application is accepted. If the application is (*a*) regular and sufficient in all respects; (*b*) bears the certificate of the secretary of the local water users' association in cases where such certificate is required; (*c*) is accompanied by the proper payments required by the provisions of the public notices and orders issued in connection with the project and the recording fees; the project manager will accept the same by filling out the blank provided and attaching his signature and seal and placing a scroll around the word "Seal," whereupon the water-right application becomes a water-right contract.

92. Attention is especially called to sections 3743 to 3747, inclusive, of the Revised Statutes, relative to the deposit and execution of public contracts. The project manager will immediately after execution of the contract execute the oath of disinterestedness required by section 3745, Revised Statutes, before a duly authorized officer on the blank form provided on the last page of the water-right contract on one of the copies. No funds are available for the payment by the Government of any fees in connection with this oath, and the project manager should therefore take such oath before some officer or clerk of the Reclamation Service, who is a notary public, during his office hours, for which service such officer or clerk is precluded from charging or receiving a fee. If it becomes necessary to take this oath before any other authorized officer, the fee due such officer must be paid to him by the water-right applicant, and the project manager is authorized to refuse to accept the water-right application on failure of the applicant to make such payment.

93. Section 3744, Revised Statutes, makes it the duty of a public officer executing a contract on behalf of the United States to file a copy of the same in the returns office of this department as soon as possible and within 30 days after the making of the contract, and the project manager will therefore forward direct to that office the copy of the contract on which he has executed the oath of disinterestedness, as above directed, as soon as possible after the execution of the same. The provision of said section requiring that all papers in relation to each contract shall be attached together by a ribbon and seal and marked by numbers in regular order, according to the number of papers composing the whole return, does not apply to the contracts for the purchase of water rights, because of the fact that only one paper is used.

94. As stated in the instructions for the execution of the blank, the contract must be duly recorded in the records of the county in which the lands are situated, and, therefore, immediately upon execution of the contract the original will be transmitted by the project manager to the proper county officer to be recorded.

95. Upon return of the original copy of the contract to the project manager, bearing certificate at the bottom of the last page executed by the recording officer, showing the recordation of the instrument, the project manager will fill out the same blank on the three copies held in his office, signing the name of the recording officer with the word "signed" in parentheses preceding such name. The original and one copy, when thus completed, will be sent to the director, who will transmit the original to the Auditor of the Treasury Department for the Interior Department, and one of the other copies will be forwarded to the applicant, and the last copy must be retained by the project manager.

96. When application is filed by an assignee of an entryman under the reclamation act, and the assignee proposes to claim credit for any payment made by the assignor, the prior applicant should execute the following form at the bottom of the last page, either written in ink or typewritten:

I, ______ ______, for value received, hereby sell and assign to ______ ______ all my right, title, and interest in and to any credits heretofore paid on water-right application No. ____ for the above-described land, together with all interests possessed by me under said application.

______ ______, *Assignor.*

______ ______, *Witness.*

97. Action on cases bearing such assignment will be the same as on other cases, except that the assignment must be permissible under the provisions of existing public notices and departmental regulations and orders. After final proof of reclamation and application for patent under act of August 9, 1912, no water-right application is required of the assignee.

98. In order to avoid discrepancies in areas and resulting payments and the acceptance of applications for tracts not designated as lands for which water can be furnished, the project manager, before accepting water-right applications on any of the forms, must assure himself of the correctness of all allegations in the application so far as can be determined by the records in his office.

99. With reference to water-right applications for land in private ownership, including entries not subject to the reclamation law, the project manager must assure himself, so far as practicable from the information available in his office, that the application includes all the land owned by the applicant within the project and open to application for a water-right, not exceeding the limit of area fixed by the reclamation act and the public notice in pursuance of which the application is presented, and in case of excess holdings that proper action has been taken with reference thereto. (See pars. 76 and 91.)

WATER-RIGHT CHARGES

100. The Secretary of the Interior will at the proper time, as provided in section 4 of the act of June 17, 1902, fix and announce the area of lands which may be embraced in any entry thereafter made or which may be retained in any entry theretofore made under the

reclamation law and the charges which shall be made per acre for the irrigable lands embraced in such entries and lands in private ownership, for the building of the works, and for operation and maintenance and prescribe the number and amount and the dates of payment of the annual installments thereof.

101. Under the act of February 13, 1911 (36 Stat. 902), the Secretary is authorized in his discretion to withdraw any public notice issued prior to the passage of that act.

102. If an entry subject to the reclamation law is canceled or relinquished, the payment for water-right charges already made and not assigned in writing to a prospective or succeeding entryman under the provisions of paragraph 109 hereof are forfeited. All water-right charges which remain unpaid are canceled by the relinquishment or cancellation of the entry, except as provided by the specific provisions of public notices applicable to particular projects.

103. In cases where water-right application has been made and the irrigable area is subsequently ascertained to be greater than that stated therein, action should be taken as follows:

(1) For land covered by water-right application reserving a lien to the United States, the water users should execute a supplemental contract of the form given below and the same shall be recorded in the county records at the expense of the United States.

(2) For land covered by water-right application not reserving a lien to the United States, the water user should execute application on the form of water-right application in current use, and the same shall be recorded in the county records at the expense of the United States.

The form of supplemental contract approved is as follows:

AGREEMENT

Know all men by these presents: For and in consideration of one dollar ($1), the receipt of which is hereby acknowledged, ______ ______ and ______ ______, his wife, of ______, hereby agree with the United States, its successors and assigns, that the irrigable acreage shown in Government water-right application, made in pursuance of the reclamation act (32 Stat. 388), No. ____, dated ______, ____, and filed for record ______ ____, page ____ of deeds of the records of ______ County, ______, shall be and hereby is, corrected from ____ acres to ____ acres, and the first installment of the charge for construction or building, operation, and maintenance shall become due on the next installment date after the amendment takes place.

Done this ____ day of ______, 19__.

______ ______
______ ______

STATE of ______,
County of ______, *ss:*

Before me, ______ ______, a notary public, personally appeared ______ ______ and ______ ______, his wife, who acknowledged to me that they executed the above instrument as their free and voluntary act for the purpose as set forth therein.

In witness whereof I have hereto affixed my hand and placed my seal ____ day of ______ ____.

______ ______,
Notary Public in and for ______.

Approved.
WATER USERS' ASSOCIATION,
______ ______, *Secretary.*

Accepted.

______ ______,
Project Manager, United States Reclamation Service.

104. Any person who applies to enter the same land at the time of relinquishment and at the same time files an assignment in writing of the charges theretofore paid will be allowed credit therefor. If the application to enter is made at a later date or is not accompanied by a written assignment of credits, the applicant must pay the water-right charges as if the land had never been previously entered.

105. In case of the sale of all or any part of the irrigable area of a tract of land in private ownership covered by a water-right application which is not recorded in the county records, the vendor will be required to have his transferee make new water-right application for the land transferred. Upon acceptance of such new water-right application the transfer will be duly noted, and in case of transfer of part the water-right charges under the original application of the vendor will be adjusted to the respective tracts. If the vendor's water-right application has been recorded on the county records, the vendee will not be required to make new water-right application.

106. Where payment is tendered for a part only of either an annual installment of water-right construction or building charges or an annual operation and maintenance charge, the same may be accepted if the insufficient tender is, in the opinion of the project manager, caused by misunderstanding as to the amount due and approximates the same.

107. In all cases of insufficient payment accepted in accordance with the provisions of the foregoing paragraph, receipts must issue for the amount paid and the water user shall be immediately notified by registered letter that the payment is insufficient and allowed a period of 30 days to make payment of the balance due to complete the charge on which a part payment has been made. If the balance of either such installments is paid within this period, additional receipt must issue therefor, but if either or both installments remain unpaid for 30 days, report shall be made to the director. In all other cases where insufficient tenders are made they shall be rejected with notice to the water user of the reason for the rejection.

108. When full payment is tendered and, upon examination, is found to be correct, the special fiscal agent will issue receipt therefor.

109. A person who has entered lands under the reclamation law, and against whose entry there is no pending charge of noncompliance with the law or regulations, or whose entry is not subject to cancellation under this act, may relinquish his entry to the United States and in writing assign to a prospective or succeeding entryman any credit he may have for payments already made under this act on account of said entry, and the party taking such assignment may, upon making proper entry of the land at the time of the filing of the relinquishment, if subject to entry, receive full credit for all payments thus assigned to him, but must otherwise comply in every respect with the homestead law and the reclamation law. Under this paragraph credit may be allowed in cases of assignment where the water-right application has been made under the reclamation extension act; and also, in case of new entry under the act of March 4, 1915 (38 Stat. 1215). (See departmental instructions, Dec. 20, 1915, 44 L. D. 544.)

110. The transfer of lands in private ownership covered by water-right contract before cancellation of the contract carries with it the

burden of water-right charges and credit for the payments made by the prior owner. (See departmental decision, Mar. 20, 1911, in the case of Fleming McLean and Thomas Dolf, 39 L. D. 580.) After any such transfer water will continue to be delivered for the entire irrigable area of the tract transferred and tract retained, at the same place or places as delivery was theretofore made, and no change will be made in the place of delivery except upon compliance with the provisions of paragraphs 113 and 114 regarding the additional expense for laterals, division boxes, surveys, or for other purposes, and for providing rights of way for irrigation or drainage ditches across the portions transferred or retained.

NOTICE OF INSTALLMENTS DUE

111. At least 30 days prior to the date on which any installment of the construction or building charge becomes payable, under the terms of any public notice or order, by any water-right applicant under a project, a notice will be mailed to each such water user at his last known post-office address as shown on the Reclamation Service project records, which notice will state the amount of construction or building charge due at the date of the notice and the amount to become due when the next succeeding installment of the construction or building charge is due. In all cases of water-right application upon which two payments of reclamation charges have become due, under any public notice or order under which such application has been made, and remain unpaid on the day after the second of such payments becomes due, a notice will be sent as soon as practicable and in no case later than the first of the following month. Such notice shall be sent by registered mail to the applicant at his last known address, as above indicated, which notice will state the amount of reclamation charges then due, and that unless, on or before the thirtieth day following that on which the notice is sent, payment be made of the amount due in excess of one full installment the following action will be taken: (*a*) In case of reclamation homestead entryman, that the entry and the accompanying water-right application will be canceled without further notice, or (*b*) in cases other than those of reclamation homestead entrymen the case will be reported to the Secretary of the Interior with recommendation for appropriate action by suit to recover the amount due, and also, if such action is deemed advisable, for the cancellation of the water-right application. The rules of practice so far as they are not in conformity herewith are hereby modified. The registry return receipts of each such notice will be preserved and promptly after the expiration of the time allowed in the notice to make payment will be forwarded to the Director of the Reclamation Service with copy of notice sent in each case of delinquency and with report and recommendation relative to cancellation or other action to be taken against the delinquent. In case such a notice is returned unclaimed by the addressee such unclaimed notice should accompany the other papers. In case the registry return receipt is not received, or, being received, has been lost, a new notice must be sent. The director will take appropriate action in each case. If the entry is subject to cancellation he will forward appropriate statement to the Commissioner of the General

Land Office with evidence of service. The bills for operation and maintenance will be similarly rendered with reference to the due date of March 1 of each year and will be handled in the same manner.

CREDITS FOR PAYMENTS ON RELINQUISHMENT

112. A homestead entryman subject to the reclamation law may relinquish part of his farm unit if in the judgment of the Secretary of the Interior it would not jeopardize the interests of the United States in the collection of the charges against the part proposed for relinquishment or otherwise. The portions of the payments theretofore made by him on account of the construction or building charge applicable to the relinquished area will be credited as follows: First, upon the portion of the charges for operation and maintenance then due against the relinquished area, and second, any remainder will be credited upon the construction or building charge against the area retained. In no case will payments theretofore made on account of operation and maintenance charges be so credited. The entryman desiring to make such relinquishment shall submit to the project manager his application therefor. The project manager will transmit such application with his recommendation through proper channels to the Director of the Reclamation Service for approval and submission to the department for authority to amend the farm-unit plat.

113. Where an entryman, whose entry is not subject to the reclamation law, relinquishes part of the land included in his entry, appropriate notation will be made on his water-right application showing such relinquishment, and his charges thereafter due will be reduced accordingly upon presenting to the project manager certificate of the local land office showing the lands relinquished and the lands remaining in his entry. If entry is made for the relinquished portion at the time of filing the relinquishment the new entryman will receive credit for payments made thereon if assignment in writing is filed, as provided in paragraphs 96 and 107 of these regulations. No credit will be allowed if the new entry is not filed at the time of relinquishment.

114. No authorization for allowance of credits as hereinabove provided will be made which will, in the judgment of the Secretary of the Interior, impose any additional expense whatever upon the United States for the construction of laterals and division boxes, or for the making of surveys or for other purposes. Where such relinquishment would involve additional expenses on the part of the United States in order to irrigate either the retained or the relinquished portion of the farm unit the applicant may deposit from time to time, in advance, as required by the project manager, payment of the estimated amount necessary to provide for the proper irrigation of either portion of the farm unit, and, in such case, if the application is not otherwise objectionable, the same will be allowed.

115. Every such relinquishment shall be subject to the following conditions: (*a*) That the relinquishing entryman and his successsors in title shall permit the entryman then or thereafter entering the relinquished part to use the irrigating and drainage ditches and

other irrigation works existing on the retained part at the time of relinquishment, whenever in the opinion of the project manager such use is reasonably necessary for the irrigation and drainage of the relinquished part; and the entryman then or thereafter making entry of the relinquished part shall have right of way over the retained portion for the necessary operation and maintenance of such ditches, drains, and irrigation works; (*b*) that the entryman then or thereafter entering the relinquished part shall have a right of way over the retained part for the construction, operation, and maintenance of such additional ditches, drains, and other irrigation works as the project manager may from time to time consider reasonably necessary or proper to be constructed upon or through the retained part for the irrigation and drainage of the relinquished part.

DESERT-LAND ENTRIES WITHIN A RECLAMATION PROJECT

116. By section 5 of the act of June 27, 1906 (34 Stat. 519), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the reclamation act of June 17, 1902, will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

117. This act applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project, or by any withdrawal of public lands under the reclamation law, from improving or reclaiming the lands covered by their entries.

118. No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the local land office for the district in which his lands are situated an affidavit showing in detail all of the facts upon which he claims the right to be excused. This affidavit must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

119. The register and receiver will at once forward the application to the project manager of the project under which the lands involved are located and request a report and recommendation thereon. Upon the receipt of this report the register and receiver will forward it, together with the applicant's affidavit and their recommendation, to the General Land Office, where it will receive appropriate consideration and be allowed or denied as the circumstances may justify.

120. Inasmuch as entrymen are allowed one year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of this act are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his affidavit explaining the delay. As a rule, however,

annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

121. An entryman will not need to invoke the privileges of this act in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation project, the affidavit explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

122. When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, as indicated herein, he will be excused, and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

123. If after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman will begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman may comply with all provisions of the reclamation law, and must relinquish or assign all the land embraced in his entry in excess of 160 acres; and upon making final proof and complying with the terms of payment prescribed in said law, he shall be entitled to patent, and final water-right certificate containing lien as provided for by the act of August 9, 1912, and act of August 26, 1912.

124. Under the act of July 24, 1912 (37 Stat. 200), desert-land entries covering lands within the exterior limits of a Government reclamation project may be assigned in whole or in part, even though water-right application has been filed for the land in connection with the Government reclamation project, or application for an extension of time in which to submit proof on the entry has been submitted under the act of June 27, 1906 (34 Stat. 519), requiring reduction of the area of the entry to 160 acres.

125. Where it is desired to assign part of a desert-land entry which has been designated as a farm unit, application for the amendment of the farm-unit plat should be filed with the project manager, as in the case of assignments of homestead entries. (See pars. 37 to 39.) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

126. Assignments of desert-land entries made and filed in accordance with these regulations must be noted on the local land-office records and at once forwarded to the General Land Office for immediate consideration under paragraphs 14 to 16, inclusive, of the circular approved September 30, 1910,[b] and reprinted with additions to March 23, 1914, entitled "Statutes and Regulations Governing Entries and Proof Under the Desert-Land Laws." Assignments filed in local land offices prior to July 24, 1912, will be recognized and accepted, if found to be regular, without compliance with these regulations. All assignments filed on or after the date of the passage of the act must comply herewith.

127. Special attention is called to the fact that nothing contained in the act of June 27, 1906, shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation law, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

128. Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish or assign all of the lands embraced in their entries in excess of 160 acres whenever they are required to do so through the local land office, and must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project.

TOWN-SITE SUBDIVISIONS

129. Where water-right application has been made and accepted for land in private ownership, no new water-right application by any purchaser of part of the irrigable area of such private land will be accepted for land so purchased, if the same is subdivided into lots of such form and area as to indicate a use thereof for town-site rather than for agricultural or horticultural purposes. In such case no notation shall be made of such transfer on the original water-right application, but water will be furnished such land on the original application, and the water-right charges collected thereunder as if no such sale or sales had been made.

130. Water for land subdivided into such form and areas as to indicate a use thereof for town-site rather than for agricultural or horticultural purposes may be procured for the entire areas so subdivided by contract with the Reclamation Service through the proper representatives of the landowners, as authorized by the Secretary of the Interior under the acts of April 16 and June 27, 1906 (34 Stat. 116 and 519).

131. Where separate water-right applications, otherwise valid, have been accepted for lands subdivided into such form and areas as indicate a use thereof for town-site rather than for agricultural and horticultural purposes, such water-right applications and the corresponding subscriptions to the stock of the water users' association

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[b] The Circular of Sept. 30, 1910, as reprinted, has been superseded by Circular No. 474 revised Dec. 18, 1928, p. 415.

may be surrendered and canceled, and water supplied to such lands under the provisions of the said acts of April 16 and June 27, 1906, upon such terms and conditions as will return to the "reclamation fund" an amount not less than the charges due under such water-right applications. Similar adjustment by cancellation and new contract may be made where water-right application has been accepted and the land has been subsequently subdivided into tracts of form and area as above.

TOWN SITES IN RECLAMATION PROJECTS

(Paragraphs 132 to 147 under this title omitted. For governing regulations, see Circular No. 1122, p. 1532.)

APPEALS

148. Appeal may be taken from the action of the project manager to the director, and ultimately to the Secretary of the Interior, as follows:

149. All cases of error or applications for relief should be promptly called to the attention of the project manager by the party affected. If the project manager decides to deny the request or application, he will serve upon the party aggrieved, personally or by registered mail, notice of his decision. The notice will state the facts, the reason for denying the relief asked, and also that the party aggrieved may appeal to the director within 30 days after receipt of the notice by filing with the project manager, addressed to the director, such appeal.

150. The appeal may consist of a written statement addressed to the director, setting out clearly and definitely the ground of complaint. The project manager will note thereon the date of its receipt in his office and promptly forward the same, with full report, to the director through the chief of construction, who will attach his recommendation.

151. Upon receipt of the papers in the director's office the matter will be reviewed and decision rendered, stating the reasons therefor and that appeal therefrom may be taken as in the next paragraph provided. Notice and copy of this decision will be served by the project manager upon the party aggrieved personally or by registered mail sent to the last-known address of such party.

152. The party aggrieved desiring to appeal from the director's decision will file with the project manager, within 60 days from receipt of notice of director's decision, written statement of appeal, setting out the grounds thereof, addressed to the Secretary of the Interior. In case of appeal from the director's ruling, the matter will be submitted to the Secretary for consideration and appropriate action.

153. In case of service of notice of decision by registered mail, such notice will be mailed to the last known post-office address as shown in the record, and evidence of service will consist of the registry return card on which such letter was delivered, or, in case of inability of postal authorities to make delivery, of the returned

unclaimed letter. When service is personal, the party making the service will make affidavit to that fact, stating time and place of service, or secure written acknowledgment of the person served, and file the same with the project manager.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Forwarded approved.

A. P. DAVIS,
Director and Chief Engineer.

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

(Acts omitted.)

CIRCULAR No. 379

RECLAMATION HOMESTEAD ENTRIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 28, 1915.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is called to the fact that the act of June 27, 1906 (34 Stat. 519), modifying the act of June 17, 1902 (32 Stat. 388), while permitting the further subdivision of surveyed lands, vests in the officials of the United States Reclamation Service no authority for the execution of original public-land surveys, and entries under the homestead laws of the United States, upon lands embraced within reclamation projects, are strictly referable to the public-land surveys executed by the duly authorized agents of the General Land Office, and to such surveys only, excepting such minor subdivisional surveys, authorized by the act of June 27, 1906, supra, as shall have been examined and accepted by the General Land Office as conformable to the surveying regulations and practice applicable in such cases.

Entries based upon such minor subdivisional surveys as those just mentioned will of course be described with reference to the plat thereof as approved by the Commissioner of the General Land Office, but entries in sections where no such subdivision has been made, must bear the description of the legal subdivision of the current official township plat, supplemented, for purposes of identification only, by the corresponding description of the tract as it appears upon the farm-unit diagram prepared by the Reclamation Service. The practice of admitting entries based merely upon a farm-unit diagram, unrelated to the existing plat of the official township survey, can not be permitted. Such action has in the past resulted in the passage to final certificates of entries, the description of which can not be identified upon the official plat governing the disposal of the public lands, and accordingly, the tract being officially unsurveyed is not subject to entry under the homestead laws.

In the future where applications to make entry are filed in your office which do not contain the description of the legal subdivision desired as shown by the current official township plat, or by a plat of subdivisional survey approved by this office under the provisions of the act of June 27, 1906, supra, you will reject all such applications subject to the right of appeal to this office as provided for in the Rules of Practice.

A strict compliance with the above will be required of you, and you will acknowledge receipt hereof.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 44 L. D. 12]

REGULATIONS RELATING TO THE FLATHEAD IRRIGATION PROJECT

Department of the Interior,
General Land Office,
Washington, March 10, 1915.

GENERAL INFORMATION

1. The Flathead irrigation project is being constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448). Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

2. An entryman for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value annually thereafter for five years, beginning one year after the date of filing, without interest.

3. No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

4. Persons who enter farm units must pay that part of the cost of building, operating, and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be

irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

5. These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior. This public notice can not be issued until the completion of the work, so that at least one unit of the project may be ready for regular distribution of water under the terms of the law. The time when this can be accomplished will depend upon the appropriations made from year to year by Congress. Until this public notice is issued it will be impossible, in most respects, to give any definite information as to any particular tract or as to the details intended to be covered by such notice; but registers and receivers will, upon inquiry, give all information available relative to the public lands included in the project and will keep the project manager of the Reclamation Service fully informed, by correspondence, as to conditions affecting the same.

ASSIGNMENTS

6. Under the provisions of the act of June 23, 1910 (36 Stat. 592), persons who have made or may make homestead entries subject to the provisions of the reclamation act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Commissioner of the General Land Office of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510), extends the provisions of the act of June 23, 1910, supra, to the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units, as hereinafter provided. (See pars. 7 to 11.)

7. Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project manager. The assignment, with accompanying affidavits of the assignor and assignee, must also be filed with the project manager for his consideration.

8. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special fiscal agent, Reclamation Service, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

9. When the plats describing the amended farm units are approved by the project manager, he will forward copy of the amendatory plat, in duplicate, together with the assignment and accompanying affidavits, to the local land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat, and one copy will be forwarded by the local land officers to the General Land Office, together with the assignment and accompanying affidavits. A copy of the amendatory plat should also be at once forwarded by the

project manager to the director's office at Washington, D. C., to be formally approved in the usual manner by authority of the Secretary.

10. No assignment of a farm unit or any part thereof shall be accepted by the Commissioner of the General Land Office, or recognized as valid for any purpose, until after the filing in the local land office of the affidavits and certificates required by paragraph 11.

11. Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing, in the form of an affidavit, to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing, in the form of an affidavit, that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing, in the form of a certificate of the project manager, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592), unless such assignment is purchased with her own money and for her own use and benefit. These affidavits may be sworn to before any officer authorized to administer oaths and having a seal, and should be in the following form, inserting the proper names and descriptions in the places indicated:

AFFIDAVIT OF ASSIGNOR

That ______, of ______, being duly sworn, deposes and says that his or her assignment under the act of July 17, 1914 (38 Stat. 510), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592), of farm unit ____, or the ______ of section ____, township ____, range ____, ____ meridian, is a bona fide and absolute sale of all his or her interest in and to the land and rights therein described, and that the assignee takes and holds same, as far as affiant is concerned, absolutely and free from any claim, interest, or demand on the part of the affiant other than (if mortgaged, so state) ______.

AFFIDAVIT OF ASSIGNEE

That ______, of ______, being duly sworn, deposes and says that he or she is the assignee of ______, under the act of July 17, 1914 (38 Stat. 510), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592), for farm unit ____, or the ____, section ____, township ____, range ____, ____ meridian, and that he or she is a duly qualified assignee for the reason that he or she does not own or hold and is not claiming any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), as amended by the act of May

29, 1908 (35 Stat. 448), or acts amendatory thereof or supplemental thereto, upon which payment in full of all installments of building and betterment charges has not been made, and that the water right for the lands hereinabove described, together with all water rights or lands held by him or her, do not exceed 160 acres of irrigable land, and that this assignment is accepted subject to any unsatisfied mortgage against the lands or any part thereof duly filed and recorded in the local land office; (*a*) that he or she is not now holding or claiming any other farm unit or entry upon which all installments of building and betterment charges have not been paid; or (in the event the assignee is a married woman, in which case it should be so stated) that this assignment was purchased with her own money and for her own use and benefit; and that he or she has no agreement or understanding by which any interest therein will inure to the benefit of another. Affiant further says that he or she has acquired the entire interest of the assignor in the tract assigned and does not hold same as trustee or in any other manner for or on behalf of the assignor. (*a*) Strike out here the part not applicable.

12. Assignments made and filed in accordance with these regulations must be noted on the local land office record and at once forwarded to the General Land Office for immediate consideration, and, if approved, the assignees in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

MORTGAGES

13. Mortgagees of lands embraced in homestead entries within the Flathead project may file in the local land office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project manager in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

14. Every such notice of mortgage interest, filed as provided in preceding paragraph, must be forthwith noted upon the records of the project manager, and of the local land office, and be promptly reported to the Director of the Reclamation Service, and to the General Land Office, where like notation will be made. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such an entry, or part thereof, under the act of July 17, 1914 (38 Stat. 510), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592), be recognized or permitted unless the assignment

specifically refers to such mortgage and is made and accepted subject thereto.

15. If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until one year after the end of the statutory period of redemption, if there be such statutory period; if not, until one year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until two years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of one year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the register of the local land office and to the engineer in charge of the project within 60 days thereafter.

CANCELLATION

16. All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due, or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project, as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due render such entries subject to cancellation; and upon receipt of a statement from the Director of the Reclamation Service that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled by the Commissioner of the General Land Office.

WIDOWS AND HEIRS OF ENTRYMEN

17. The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total

irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

18. Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes, be sold for the benefit of such heirs. (See heirs of Frederick C. De Long, 36 L. D. 332.) The purchaser and his assignees take subject to the payment of the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

FINAL AND COMMUTATION PROOFS, CERTIFICATES, AND PATENTS

19. Registers and receivers are directed to furnish the chief of field division with copies of application to make proof on all entries, noting on each application the fact that the land is within the project. As soon as such notice is received by the chief of field division, he will refer the same to the project manager, who will make report by indorsement on the notice, as to whether the lands are needed for construction purposes, and as to any other matters that he may be instructed to report on by special instructions. This notice should be returned by the project manager to the chief of field division in sufficient time to enable that officer to return the same to the local land office prior to the date fixed for proof.

20. In all cases where the project manager reports that the lands are needed for construction purposes the register and receiver will forward the proof, if found to be regular, to the General Land Office without issuance of final certificate. In all cases, whether or not the lands are needed for construction purposes, the register and receiver will forward the proof, if found to be regular, to the General Land Office, without issuance of final certificate, unless there has been submitted a final affidavit, duly corroborated by two witnesses and approved by the project manager, showing the payment of all the charges, including the water-right charges, due in connection therewith to date, and the reclamation for agricultural purposes of at least one-half of the irrigable area of the entry, as provided in paragraph 26 hereof. If such affidavit showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the local land officers, to be sufficient, they will issue final certificate on the entry as hereinafter provided.

21. If any proof offered under this law be irregular or insufficient the register and receiver will reject it and allow the entryman the usual right of appeal, and if the General Land Office finds any proof forwarded to be insufficient or defective in any respect, whether or not final certificate has issued on the same, the proof or certificate may be held for rejection or cancellation and the entryman will be notified of that fact, or he may be given an opportunity to cure the defect or to present acceptable proof.

22. Soldiers and sailors of the War of the Rebellion, the Spanish-American War, or the Philippine insurrection, and their widows and

minor orphan children who are entitled to claim credit for the period of the soldiers' or sailors' service under the homestead laws will be allowed to claim credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the water-right charges have been met.

23. Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the General Land Office, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

24. Upon the submission of proof on entries within the Flathead project, registers and receivers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

25. Entrymen, in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit an affidavit, duly corroborated by two witnesses, and sworn to before an officer authorized to administer oaths and having a seal, in duplicate, to the project manager showing those facts. Thereupon it shall be the duty of the project manager to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct, he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Director of the Reclamation Service, and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the register and receiver of the land district in which the land is situated, with his report or findings thereon, and such officers will thereupon in turn transmit the showing to the General Land Office for its action. If the proof be rejected by the Commissioner of the General Land Office, appeal will lie to the Secretary of the Interior as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water-right charges due on account thereof have been paid and that reclamation has been accomplished as required by law. Where prior to issuance of public notice water has been furnished to entrymen on a water-rental basis, and by means

thereof reclamation sufficient to obtain patent under the act of August 9, 1912, has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen desiring to obtain patent under that act upon the form of application approved by the department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by the Secretary.

26. To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other incumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least two years next preceding the date of approval by the project manager of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following: (*a*) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown; (*b*) a substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover, or, (*c*) a season's growth of orchard trees, or vines, of which 75 per cent shall be in a thrifty condition.

27. Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted by the Commissioner of the General Land Office, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation upon examination by the local land officers, the register and receiver will issue final certificate on the entry, proceeding in the usual manner, and forward the same with the proof of reclamation and payments to the General Land Office. The final certificate so issued must be indorsed by the local land officers across the face of each certificate when issued as follows: " Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)." Upon receipt of such case in the General Land Office, if found to be regular, it will be approved for patent under said acts, and patent issued reserving the lien as provided in the act of August 9, 1912.

28. The Director of the Reclamation Service will, upon the full payment of all building and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

CLAY TALLMAN, *Commissioner*.

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

(Laws omitted.)

CIRCULAR No. 534

PATENTS ON RECLAMATION ENTRIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 17, 1917.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress of February 15, 1917 (39 Stat. 920), which amends the proviso to section 1 of the act of August 9, 1912 (37 Stat. 265), and reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the proviso to section one of the Act of August ninth, nineteen hundred and twelve (Thirty-seventh Statutes, page two hundred and sixty-five), entitled "An Act providing for patents on reclamation entries, and for other purposes," be amended to read as follows: "*Provided,* That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate."

Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 637

FINAL CERTIFICATES ON RECLAMATION ENTRIES TO BE INDORSED TO SHOW THAT THEY DO NOT COVER WATER-RIGHT CHARGES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 8, 1919.

Registers and Receivers, United States Land Offices.

SIRS: In order to avoid any misunderstanding on the part of entrymen as to the meaning of final certificates issued on reclamation entries, you will hereafter indorse across the face of each such final certificate a statement to the effect that it does not cover payment of water-right charges and that the patent to be issued on it will reserve to the United States a lien for the payment of such charges. The indorsement shall be made both on the original and duplicate.

Rubber stamps have been ordered for the purpose, and as soon as they are received each register who will have use for it will be furnished with one. No requisition will be necessary.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 47 L. D. 144]

Circular No. 645

CASTLE PEAK IRRIGATION PROJECT, UTAH—INSTRUCTIONS UNDER ACT OF FEBRUARY 28, 1919 (40 STAT. 1210)

Department of the Interior,
General Land Office,
Washington, May 6, 1919.

Registers and Receivers, Salt Lake City and Vernal, Utah.

Sirs: Your attention is directed to the act of February 28, 1919 (40 Stat. 1210), which reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any qualified entryman who has heretofore made bona fide entry upon land subsequently withdrawn under the provisions of the reclamation act of June seventeenth, nineteen hundred and two (Thirty-second Statutes, page three hundred and eighty-eight), for the Castle Peak irrigation project, in Utah, upon filing an application to have his entry made subject to all the charges, terms, conditions, provisions and limitations of the reclamation act, together with a satisfactory showing of full compliance with the homestead laws under which such entry was made to the date of such application, may be granted leave of absence from the land until the Secretary of the Interior announces the availability of a water supply for the irrigation of the land, or until the lands embraced in his entry shall be restored to the public domain: *Provided,* That the period of actual absence under this act shall not be deducted from the full time of residence required by law.

This act applies to any qualified entryman who, prior to the passage thereof, made a bona fide homestead entry upon public land which subsequent to date of such entry has been withdrawn under the provisions of the reclamation act of June 17, 1902 (32 Stat. 388), in connection with the Castle Peak irrigation project, Utah.

Any such entryman desiring to avail himself of the benefits of said act should file in the proper local land office an application asking to have his entry made subject to all the charges, terms, conditions, provisions, and limitations of the reclamation act and requesting leave of absence in accordance with the act, if he desires such leave.

Such application must be sworn to by the applicant and corroborated by two witnesses in the land district or county within which the entered lands are located before an officer authorized to administer oaths and having an impression seal. The application should contain the serial number and description of the entry and show the date of establishment of residence on the land, date and duration of all absences therefrom, area of land cultivated each year since date of entry, and the character, extent, and value of all improvements placed on the land, to the end that it may be ascertained whether the entryman has fully complied with the homestead laws under which his entry was made to the date of such application.

Registers and receivers will examine all such applications and are authorized to suspend them with notice to cure defects within 30 days, or to reject them, subject to the usual right of appeal to the Commissioner of the General Land Office. If the showing made is found satisfactory, the register and receiver will grant the entryman leave of absence from the land until the Secretary of the Interior announces the availability of a water supply for the irrigation thereof or until the lands embraced in the entry shall be restored to the public domain.

These applications are to be forwarded with the regular monthly returns.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

CIRCULAR No. 700

AMENDING PARAGRAPH 74 OF THE GENERAL RECLAMATION CIRCULAR APPROVED MAY 18, 1916

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 7, 1920.

Registers and Receivers, United States Land Offices.

SIRS: You are hereby advised that on May 20, 1920, the Secretary of the Interior amended paragraph 74 of the General Reclamation Circular to read as follows:

> Notice of all action in the local land office or in the General Land Office regarding any entry for which water right application has been made, or may be made, whether subject to the reclamation law or not, shall be given immediately by the register and receiver to the project manager by the forwarding of copy of decision in the case. The project manager shall advise the register and receiver of all action regarding any water right application or contract by the Reclamation Service affecting the status or validity of the homestead or desert land entry covering the land, Among the several actions of which the register and receiver are especially directed to notify the project manager, are:
>
> (*a*) Allowance of entries.
> (*b*) Conformation of entries to farm units.
> (*c*) Cancellation of entries.
> (*d*) Applications for reinstatement of entries.
> (*e*) Acceptance of final proof.
> (*f*) Issuance of final certificate.
> (*g*) Issuance of patent.
> (*h*) Acceptance or rejection of assignments under the act of June 23, 1910 (36 Stat. 592).
> (*i*) Contest against entries, granting leave of absence, death or disability of entryman, or any other actions materially affecting the entry, or affecting land under reclamation withdrawal.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 716

PARAGRAPHS 41 AND 76, GENERAL RECLAMATION CIRCULAR, AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 11, 1920.

Registers and Receivers, United States Land Offices.

SIRS: You are hereby advised that, on July 1, 1920, the Secretary of the Interior amended paragraph 41 of the General Reclamation

Circular, approved May 18, 1916 (45 L. D. 385–445), to read as follows:

41. Assignments under this act are expressly made "subject to the limitations, charges, terms, and conditions of the reclamation act," and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges, each assignor must present a showing in the form of an affidavit to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned, and each assignee must present a showing in the form of an affidavit that he does not own or hold and is not claiming any other farm unit or entry under the reclamation law or a tract of private land receiving water from a federal reclamation project upon which all installments of construction or building and betterment charges have not been paid in full. If the assignee is a woman, it must be shown whether she is married or single, and if a married woman it must be shown that the assignment is purchased with her own separate money, in which her husband has no interest or claim. (39 L. D. 504, and Sadie A. Hawley, 43 L. D. 364.) These affidavits must be accompanied by evidence of the conveyance of the land, as indicated in paragraph 42, and a further showing in the form of a certificate of the project manager that water-right application therefor is not yet receivable, or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. The affidavits and certificates above described, should be in the following form, inserting the proper names, descriptions, etc., in the places indicated:

CERTIFICATES OF PROJECT MANAGER

This is to certify that the project manager of the ------ ------ project, State of ------, has not been authorized to receive water-right application for the following-described lands under said project, or any part thereof, to wit: ------.

Dated ------ ----, 19--.

------ ------,

Project Manager ------ Project, ------, State of ------.

Or—

This is to certify that ------, post-office address ------, did on the ------ day of ------, 19--, file in the office of the project manager, for acceptance, a water-right application in due form for the irrigable area in the following-described tract of land under said project, to wit: ------ ------.

Dated ------ ----, 19--.

------ ------,

Project Manager ------ Project, ------, State of ------.

AFFIDAVIT OF ASSIGNOR

------ ------, of ------, being duly sworn, deposes and says that h-- assignment under the act of June 23, 1910 (36 Stat. 592), of farm unit ------ or the ------ of section ------, township ------, range ------, ------ meridian, is a bona fide and absolute sale of all h-- interest in and to the land and rights therein described, and that the assignee takes and holds same, as far as affiant is concerned, absolutely and free from any claim, interest, or demand on the part of the affiant other than ----------. (If mortgaged, so state.)

------ ------.

Subscribed and sworn to before me this ------ day of ------, 19--.

[SEAL]

------ ------,

------ ------.

(Official character)

AFFIDAVIT OF ASSIGNEE

------ ------, of ------, being duly sworn, deposes and says that --he is the assignee of ------ under the act of June 23, 1910 (36 Stat. 592), for farm unit ------, or the ------ section ------, township ------, range ------, ------ meridian; that --he is a duly qualified assignee for the reason that --he is over 21 years of age; that --he does not own or hold, and is not claiming any other farm unit or entry under the reclamation act of June 17, 1902 (32 Stat. 388), or acts amendatory thereof or supplemental thereto, or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system, upon which payment in full of all installments of construction or building and betterment charges has not been made; that this assignment is accepted subject to any unsatisfied mortgage against the land or any part thereof duly filed and recorded in the local land office; that she is ______ married; that this assignment is purchased with her own separate money in which her husband has no interest or claim; and that __he has no agreement or understanding whereby any interest therein will inure to the benefit of another. Affiant further says that __he has acquired the entire interest of the assignor in the tract assigned and does not hold same as trustee or in any other manner for or on behalf of the assignor.

______ ______.

Subscribed and sworn to before me this the ______ of ______, 19__.

______ ______,

______ ______.
Official character

You are further instructed that on July 1 and July 24, 1920, the Secretary of the Interior amended paragraph 76 of said circular to read as follows:

76. Lands which have been patented or which were entered before the reclamation withdrawal may obtain the benefit of the reclamation law. However, the landowner must be an actual bona fide resident on the land or occupant thereof residing in the neighborhood at the time of making water-right application. The Secretary of the Interior has fixed a limit of residence in the neighborhood at a maximum of 50 miles. This limit of distance may be varied, depending on local conditions. After water-right application has been made and accepted (which constitutes a water-right contract), the applicant is not required to continue his residence on the land or in the neighborhood. A landowner may, however, hold rights to the use of water for more than one tract of patented land in the prescribed neighborhood at one time, provided that the aggregate area of such tracts upon which the construction charge has not been fully paid does not exceed the maximum limit established by the Secretary of the Interior nor the limit of 160 acres fixed by the reclamation law, on which water will be furnished. The Secretary has decided that the area which may be held by any one landowner after the construction charges have been fully paid may exceed 160 acres. (43 L. D. 339–341.) Water will not be furnished on a tract of patented land and a tract of unpatented land in the same ownership unless the water charges have been paid in full on one of the tracts. In other words, water will not be furnished on a tract of private land, regardless of the area, and a tract of unpatented land in the same ownership at the same time unless all water charges on one of the tracts have been paid in full. A landowner who has made contract for the use of water in connection with 160 acres of irrigable land and sold the same, together with the water right, can make other and successive contracts for other irrigable lands owned or acquired by him. Holders of more than 160 acres of irrigable land, or more than the limit of area per single ownership of private land as fixed by the Secretary of the Interior, for which water may be purchased within the reclamation project, if such a limit has been fixed, must sell or dispose of all in excess of that area before water-right application will be accepted from such holders. (See pars 91 and 99.) If the holder of a greater area desires, he can subscribe for stock in the local water users' association, (if there be one), for his entire holding, executing a trust deed, giving the association power to ultimately sell the excess area to actual settlers who are qualified to comply with the reclamation law, unless the land has been sold by the owner when the Government is ready to furnish water thereon, or provide for the disposal of such excess holdings in some manner approved by the Secretary of the Interior. Holders of land in private ownership who have made and had accepted water-right application for their holdings may receive water for lands in excess of the area hereinabove stated, in case such excess lands have had water-right application made and accepted therefor, and have been acquired by descent, will, or by foreclosure of any lien; in which case said excess lands may be held for two years and no longer after their acquisition, without in any manner militating against the right of the holder to be furnished water under the reclamation law.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 48 L. D. 113]

CIRCULAR NO. 756

AMENDING SECTION 23 AND REVOKING SECTION 24 OF THE GENERAL RECLAMATION CIRCULAR APPROVED MAY 18, 1916

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 16, 1921.

Registers and Receivers, United States Land Offices.

SIRS: You are hereby advised that the First Assistant Secretary of the Interior, on April 21, 1921, approved an order as follows:

In view of the act of June 25, 1910 (36 Stat. 835), as amended by section 10 of the act of August 13, 1914 (38 Stat. 686), section 24 of regulations approved May 18, 1916 (45 L. D. 385–390), is inoperative, and is hereby revoked. This action necessitates a slight change in the preceding section. Accordingly, section 23 of said regulations is hereby amended to read as follows:

> A person who has made homestead entry for any area within a reclamation project can not make an additional homestead entry. One who has made homestead entry for less than 160 acres outside of a reclamation project is disqualified from making an additional entry within a reclamation project, as every entry within a project is either made for or is subject to conformation to a farm unit, which is the equivalent of a homestead entry of 160 acres of land outside of a reclamation project. (38 L. D. 58.)

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 48 L. D. 153]

CIRCULAR NO. 759

AMENDING GENERAL RECLAMATION CIRCULAR OF MAY 18, 1916, AND MODIFYING DEPARTMENTAL DECISION IN THE CASE OF JOHN J. MANEY (35 L. D. 250)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washingon, June 18, 1921.

Registers and Receivers, United States Land Offices.

SIRS: You are hereby advised that, in view of the decisions of the United States Supreme Court in the cases of Payne *v.* Central Pacific Railway Company, decided February 28, 1921, and Payne *v.* New Mexico, decided March 7, 1921, the First Assistant Secretary of the Interior, by order approved May 27, 1921, revoked paragraph 15 of the General Reclamation Circular dated May 18, 1916, and amended paragraphs 13, 14, and 16 of said circular, as hereinafter set forth. Said order also modified the decision in the case of John J. Maney (35 L. D. 250), in so far as said decision is in conflict with the action taken in this order.

13. After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain so with-

drawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied. Any withdrawal otherwise valid shall not be affected by failure to note same on tract book or otherwise follow usual procedure. (42 L. D. 318.) Lands can not be examined at the instance of individuals prior to the completion of construction to determine whether particular lands will be irrigable. (42 L. D. 8.)

14. If any lands embraced in any unapproved or uncertified selection are needed in the construction and maintenance of any irrigation works (other than for right of way for ditches or canals reserved under act of August 30, 1890, 26 Stat. 391) under the reclamation law, payment therefor will be made upon agreement of the owner with the representative of the Government as to the value of the land and the improvements thereon. Where the owner of the land and the representative of the Government fail to agree as to the amount to be paid therefor, the same shall be acquired by condemnation proceedings under judicial process, as provided by section 7 of the reclamation act of June 17, 1902 (32 Stat. 388).

15. (Revoked.)

16. Lands withdrawn under the second form and becoming subject to entry in the manner provided by section 10 of the act of August 13, 1914, can be entered only under the homestead laws and subject to the provisions, limitations, charges, terms, and conditions of the reclamation law, and all applications to make selections, locations, or entries of any other kind on such lands should be rejected, except that where settlement rights were acquired prior to the withdrawal and have been diligently prosecuted and the homestead law complied with, the settler will be entitled to make and complete his entry subject to all the charges, terms, conditions, limitations, and provisions of the reclamation law. (See Sarah E. Allen, 44 L. D. 331.) No person will be permitted to gain or exercise any right whatever under any settlement or occupation begun after withdrawal of the land from settlement and entry until the land becomes subject to settlement and entry under the provisions of the acts of June 25, 1910 (36 Stat. 835), February 18, 1911 (36 Stat. 917), and section 10 of the act of August 13, 1914 (38 Stat. 686), or is restored to the public domain.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 50 L. D. 506]

RULE GOVERNING THE APPLICATION OF THE PROVISO TO SECTION 7, ACT OF MARCH 3, 1891, WITH RESPECT TO RECLAMATION HOMESTEAD ENTRIES

Instructions

Department of the Interior,
Washington, May 26, 1924.

Finney, First Assistant Secretary:

The department has considered your [Commissioner of the General Land Office] letter of April 29 last, requesting instructions as to whether the proviso to section 7 of the act of March 3, 1891 (26 Stat. 1095), is applicable to cases in which final commissions were paid at the date of proof of compliance with the ordinary requirements of the homestead law on entries made subject to the reclamation act of June 17, 1902 (32 Stat. 388).

The purpose of the said proviso was to relieve a congestion of suspended entries in the General Land Office, and to avoid such congestion in the future. It was intended to operate upon all the cases of the classes named therein wherein the entryman had done all the formal acts to and including the submission of final proof and final payments, regardless of the sufficiency of such proof, provided no action adverse to the proof—protest or contest—was initiated within two years from the date of the receiver's final receipt. It put the entryman in the position of one who had earned patent, and in addition made the issuance of patent mandatory. The confirmatory period begins to run from the date "of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead * * * laws."

In its decision in the case of Thomas J. Stockley et al. *v.* United States, (260 U. S. 532), the Supreme Court of the United States quoted with approval the instructions of June 4, 1914 (43 L. D. 322), wherein it was said (p. 323):

> There is no doubt that Congress chose the date of the receiver's receipt rather than of the certificate of the register as controlling, for the reason that payment by the claimant marks the end of compliance by him with the requirements of law.

In the case of a homestead entry which is made subject to the provisions of the reclamation act, the confirmatory period, if the act of 1891 applies at all, can not begin to run upon submission of proof of compliance with the general requirements of the homestead law, for the following reasons:

First. Such a proof does not, under the law, entitle the entryman to a patent, even if the proof is in all respects satisfactory.

Second. In practice no receiver's final receipt issues at the time of the submission of such proof, and in law no final receipt could issue at that time, for, in the language of the Supreme Court and the department, as heretofore indicated, the perfection of such proof by payment of the final commissions would not mark "the end of compliance by him with the requirements of law."

Of course the Land Department can not avoid the effect of the act of 1891 by a mere change of practice in the matter of issuing receipts or requiring payments; but the reclamation law has created a condition whereby a point in the perfection of the entry such as was contemplated by the act of 1891 can not readily arise. As the Supreme Court said, the proviso to-day means nothing more nor less than it did when it was enacted, but the reclamation law has eliminated, as a fixed point, that conjunction of events which marked the beginning of the period of confirmation contemplated by the proviso.

In other words, the proof of compliance with the ordinary provisions of the homestead law does not complete the entry nor confer a right to a patent. There must be reclamation of the land and payments made on a water right. If the claimant conforms his entry to a farm unit, shows reclamation of one-half the irrigable area in such unit, assumes the payment for a water right, pays all the water-right charges which have accrued, makes proof of these facts, and pays the required final commissions, for which receipt issues, he becomes entitled to a patent which reserves a lien on the land for all sums due the Government; and the act of 1891 then begins to operate.

You are therefore instructed that the receipt for the payment of the final commissions at the date of the submission of proof of compliance with the ordinary provisions of the homestead law in connection with a reclamation entry does not start the running of the confirmatory period provided for by the act of 1891.

With your letter you forwarded two cases—Miles City 01556 and Waterville 03999.

In the Miles City case, the entry was made May 31, 1905, and was conformed to a farm unit on January 22, 1914. Proof of compliance with the ordinary requirements of the homestead law was submitted July 11, 1910, and was accepted as satisfactory by your office on April 21, 1911. On June 7, 1920, the required proof of reclamation was furnished, but in the meantime a portion of the land had been included in Lower Yellowstone Irrigation District No. 1, and final certificate did not issue until May 29, 1923. The land was withdrawn as valuable for coal on April 20, 1910, and is now classified at $20 per acre. Entryman has not elected to accept a patent containing the provisions and reservations of the act of March 3, 1909 (35 Stat. 844), nor has he been required to file such an election. Upon the completion of satisfactory proof of reclamation, the receipt for the final commissions issued on July 15, 1910, became on June 7, 1920, a "receiver's receipt upon the final entry," and under the proviso to the act of 1891 it is now too late to issue any requirements under the coal land classification.

In the case of Waterville 03999, the entry was made for a farm unit on October 27, 1906, and satisfactory proof of compliance with the ordinary provisions of the homestead law was submitted October 28, 1911. On May 15, 1913, the project manager filed in the local office a final reclamation affidavit by entryman, and a report to the effect that 34 acres of the unit are irrigable; that practically all the land has been cleared and cultivated, but there is no evidence of the growing of a crop; that 10.8 acres were planted to orchard but only 6.7 acres of the trees are alive, and ditches had been constructed for the irrigation of only 6.7 acres. There were no water right charges delinquent against the land, but the project manager recommended that patent be withheld until further showing has been made as to reclamation and cultivation. The final commissions ($1.50) were forwarded through the project manager, and on May 15, 1913, the receiver issued his receipt therefor. You have taken no action in the matter, and the entryman has made no further showing. The confirmatory period began to run on May 15, 1913, and it is now too late to require any further showing.

[Reported, 51 L. D. 204]

REGULATIONS GOVERNING THE ADMINISTRATION OF SUBSECTION C OF THE ACT OF DECEMBER 5, 1924—RECLAMATION ENTRIES

Department of the Interior,
Bureau of Reclamation,
Washington, D. C., September 12, 1925.

To All Field Offices:

1, Subsection C of the act of December 5, 1924 (43 Stat. 672, 702), reads as follows:

> That the Secretary is hereby authorized, under regulations to be promulgated by him, to require of each applicant including preference right ex-service

men for entry to public lands on a project, such qualifications as to industry, experience, character, and capital as in his opinion are necessary to give reasonable assurance of success by the prospective settler. The Secretary is authorized to appoint boards in part composed of private citizens, to assist in determining such qualifications.

2. Hereafter no entry for public lands within a Federal irrigation project shall be accepted by the local land office until the applicant therefor has satisfied an examining board, to be appointed on each project to consider such matters, that he is possessed of such qualifications (in addition to the qualifications required under the homestead laws), as to industry, experience, character, and capital, as in the opinion of the board are necessary to give reasonable assurance of success by the prospective settler.

3. Each applicant for entry of such public lands, including preference right ex-service men, and successful contestants under the act of May 14, 1880 (21 Stat. 140), shall file an application with the Bureau of Reclamation which, among other things, must state with respect to the applicant, his or her age, status as to citizenship, whether married or single, number of children, and their sex and ages, other dependents, ownership of farm lands elsewhere and the value thereof, farming experience, assets and liabilities, and give references as to character and industry. The application may state the particular farm unit desired and may also include a second and third choice and, when practicable, the choice of a fully qualified applicant will be approved. However, the intent of the law is to select the best qualified applicants for all farms available and the Government must therefore reserve the right to distribute the farms to those best qualified, regardless of individual preferences.

4. Applicant must possess good health and vigor and have had at least two years' actual experience in farm work and farm practice. The applicant must have at least $2,000 in money, free of liability, or the equivalent thereof in livestock, farming equipment, or other assets deemed by the examining board to be as useful to the said applicant as money.

5. The above minimum requirement as to capital and experience shall not apply when the farm (fractional farm unit) applied for is 10 acres or less in area and the applicant can show to the satisfaction of the examining board that the development of the farm is feasible from the capital the applicant may reasonably be expected to obtain as a wage earner.

6. An examining board of three members or more shall be appointed on each project by the Secretary of the Interior, or such officer as he shall authorize to make such appointments, to consider the fitness of applicants to undertake the development and operation of a farm. The members of such board shall serve for a period of one year, or until their successors are appointed, unless otherwise ordered by the Secretary or such officer as he shall authorize to make such appointment. Each superintendent is requested to submit recommendations for membership on the board of examiners for his project at the earliest practical date.

7. A member representing the Bureau of Reclamation shall keep the records of the board and notify applicants when and where the board shall meet to deal with applications, in order that applicants

may personally submit additional information as to their fitness for the undertaking.

8. The examining board shall note the date of receipt by it of each application filed and interview the applicants who appear before it, to determine the qualifications of prospective settlers. Careful investigation shall be made to verify statements and presentations made by applicants, to the end that no misunderstanding may prevail either as to the applicant's fitness or his appreciation of the problems before him.

9. After decision by the board its conclusion, if adverse to the applicant, shall be reduced to writing and a copy thereof forwarded to the applicant by registered mail. Evidence of service of such notice shall consist of registry return receipt signed by the applicant or his agent or registered letter addressed to applicant at his record address and returned unclaimed. The board's decision as to the relative qualification of each applicant, based upon a percentage rating of the elements of industry, experience, character, and capital, shall be final unless appeal from such decision be made to the Secretary of the Interior within 30 days from receipt of notice, and such appeal should be filed in the project office where the lands are situated.

The relative standing of applicants will be based upon a percentage rating, determined as follows:

Each of the elements of industry, experience, character, and capital will be considered as having a possible weight of 25 per cent, and applicants will be rated according to the following scale:

INDUSTRY	Per cent
Fair	5
Good	15
Excellent	25

FARM EXPERIENCE	
2 years or more in East	15
2 years or more in irrigation	25

CHARACTER	Per cent
Fair	5
Good	15
Excellent	25

CAPITAL	
$2,000	15
$3,000	20
$5,000	25

10. Approval by the board of an application followed by the filing of water right or water rental application when either is provided for on the particular project involved, which feature the board shall cover by appropriate notation on the application, will entitle the applicant to file homestead application at the designated local land office for the farm unit assigned to him. Such homestead application shall be made within 15 days from the date of approval of the application, except in those cases where a preference right is being exercised, in which event the period provided by law for the exercise of the preference right shall control. Failure to so make such homestead application will entitle the board to approve another application for the same unit, allowing the applicant to make homestead entry; this procedure continuing, if necessary, until an approved applicant makes a homestead entry.

11. The above regulations relates in the main to the entry of vacant farm units upon existing projects and existing divisions thereof, and

while suggestive of the procedure to be followed in the opening of new projects or new divisions, each public notice or order opening new projects or new divisions will contain detailed instructions on the subject of the qualifications necessary for prospective entrymen and the procedure under which such qualifications will be determined.

ELWOOD MEAD, *Commissioner.*

I concur:

WILLIAM SPRY,
Commissioner of the General Land Office.

Approved:

HUBERT WORK, *Secretary.*

[Reported, 51 L. D. 203]

REGULATIONS GOVERNING RECLAMATION ENTRIES ON FEDERAL IRRIGATION PROJECTS

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE,
Washington, D. C., September 19, 1925.

Registers, United States Land Offices:

There is inclosed a copy of the regulations approved September 12, 1925,[c] by the Secretary of the Interior governing the administration of subsection C of the act of December 5, 1924 (43 Stat. 672, 702). Your attention is particularly called to paragraph 2 of the regulations which provides that hereafter—that is, September 12, 1925, the date of the approval of the regulations—no entry for public lands within a Federal irrigation project shall be accepted until the applicant therefor has satisfied an examining board that he is possessed of such qualifications as are necessary to give reasonable assurance of success by the prospective settler.

Accordingly, you will allow no further reclamation entries until the examining boards have been organized on the several projects by the Bureau of Reclamation and are prepared to pass on the qualifications of the applicants. The application for lands must have the approval of the board; and paragraph 10 of the regulations states that such homestead application shall be made within 15 days from the date of approval of the application except in those cases where a preference right is being exercised in which event the period provided by law for the exercise of the preference right shall control.

Paragraph 11 states that the regulations relate in the main to entry of vacant farm units, and that each public order opening new projects or divisions will contain specific instructions on the subject.

You will at once incorporate this order on the records of your office, be governed accordingly, and acknowledge receipt hereof.

THOS. C. HAVELL,
Acting Commissioner.

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[c] The regulations of Sept. 12, 1925, are printed on p. 1249 et seq.

[Reported, 51 L. D. 240]

AMENDMENT OF FARM-UNIT PLATS—PARAGRAPH 43 OF GENERAL RECLAMATION CIRCULAR (45 L. D. 385), AMENDED[14]

Department of the Interior,
Bureau of Reclamation,
Washington, D. C., September 30, 1925.

Under existing regulations in paragraph 43 of the General Reclamation Circular, approved May 18, 1916 (45 L. D. 385), concerning assignment of reclamation homestead entries under the act of June 23, 1910 (36 Stat. 592), there is a hiatus in the procedure for amending plats on file in this bureau and in the General Land Office, in cases where entrymen assign a portion of an established farm unit. To cover this point it is recommended that paragraph 43 of the circular (45 L. D. 385, 396), be amended by adding after the second sentence the following:

> In case of an assignment of a portion of an existing farm unit (paragraphs 37 to 39), if the evidence is found to meet the requirements of the law and regulations, the Commissioner of the General Land Office will so advise the Commissioner of the Bureau of Reclamation, who will then cause the issuance of an order amending the farm-unit plats so as to show new farm units in accordance with the assignment.

The paragraph as amended will then read as follows:

> 43. Assignments made and filed in accordance with these regulations must be noted on the local land office records and at once forwarded to the General Land Office for immediate consideration. Where an assignment which does not fully comply with the above regulations is presented to the local land office the register will reject same, subject to the right of appeal to the Commissioner of the General Land Office in accordance with the Rules of Practice. In case of an assignment of a portion of an existing farm unit (paragraphs 37 to 39), if the evidence is found to meet the requirements of the law and regulations, the Commissioner of the General Land Office will so advise the Commissioner of the Bureau of Reclamation, who will then cause the issuance of an order amending the farm-unit plats so as to show new farm units in accordance with the assignment. Upon the approval of an assignment, the assignee will at the proper time make payment of the water-right charges and submit proof of reclamation as would the original entryman, and after proof of full compliance with the law, may receive a patent for the land.

Elwood Mead, *Commissioner.*

I concur.

William Spry,
Commissioner of the General Land Office.

Approved October 14, 1925.

E. C. Finney,
First Assistant Secretary.

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[14] Promulgated by the General Land Office by letter of Oct. 21, 1925, to registers, United States land offices.

INTERPRETATIONS AND REGULATIONS AFFECTING SECTIONS 41 TO 45, INCLUSIVE, AND FORM OF APPLICATION FOR INDIVIDUAL ADJUSTMENT, ACT OF MAY 25, 1926 (44 STAT. 636)

Department of the Interior,
Bureau of Reclamation,
Washington, August 20, 1926.

From Commissioner to all field offices:

1. Herewith copy of interpretations and regulations governing the administration of the above-named sections, as approved by the First Assistant Secretary, August 20, 1926,[d] and copy of the form of application, approved on the same date, to be used for individual adjustments.

2. A copy of each of the papers named should be furnished all project water users whose land has in whole or in part been classified and carried in the adjustment act as class 5 or 6 lands. The water users should be urged to make return of the application blank, properly filled out, at the earliest possible date, and not later than 30 days from receipt of notice. The matter of adjustment has been placed very largely by the regulations in the hands of the superintendents, subject to the concurrence of the Director of Reclamation Economics, but for reasons which will appear below, final action should not be taken in any case until all the applications that may be reasonably expected have been returned and studied and a complete canvass made of the entire situation on each project.

3. It is anticipated that on several of the projects the number of exchange applications will exceed the number of available farm units, and should this situation arise, it will be necessary, under instructions received, to formulate and submit to the department for approval, a plan of procedure. Except for the preference right to ex-service men, all eligible for exchange should be given the same consideration, and this probably may be best accomplished by a drawing, should the complication mentioned actually materialize. Even on those projects where the available lands are sufficient to absorb all exchange applications, conflicting applications may be filed so that it is apparent that no exchanges should be allowed prior to a canvass of the complete returns.

4. Under the direction of the Director of Reclamation Economics, each project should prepare and have on hand a supply of mimeographed statements showing the description, irrigable area, and any other pertinent information with respect to the land immediately available for entry. A supply of the statements should also be furnished the Denver and Washington offices.

5. The superintendent of the project from which the applications originate should verify all statements and figures on the Farm Adjustment application and record his findings in the space provided therefor, and add such additional data as may appear necessary to bring out all pertinent facts regarding the proposed adjustment. Failure of a water user to furnish any information or records required under the law and the regulations will render his application subject to rejection, and the water user should be so advised. When a water user applies for exchange to another project, the superintendent of the project where the original holding is located

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[d] The regulations of Aug. 20. 1926, are printed on p. 1255 et seq.

should record his findings and forward the application to the superintendent of the project where the lieu land is situated and the latter will add his findings and forward to the Director of Reclamation Economics for consideration.

6. There are no available figures to indicate the number of copies of the regulations and of the application blanks that will be required. Three thousand copies of each have been mimeographed and will be forwarded to the Denver office to be distributed to the projects upon requisition. The Denver office should keep this office advised as to the condition of the supply.

Elwood Mead, *Commissioner.*

[Reported, 51 L. D. 525]

INTERPRETATIONS AND REGULATIONS GOVERNING THE ADMINISTRATION OF SECTIONS 41, 42, 43, 44, AND 45 OF THE ACT OF MAY 25, 1926 (44 STAT. 636)

Washington, *August 20, 1926.*

Sec. 41. All lands found by the classification to be permanently unproductive shall be excluded from the project and no water shall be delivered to them after the date of such exclusion unless and until they are restored to the project. Except as herein otherwise provided, the water right formerly appurtenant to such permanently unproductive lands shall be disposed of by the United States under the reclamation law: *Provided*, That the water users on the projects shall have a preference right to the use of the water: *And provided further*, That any surplus water temporarily available may be furnished upon a rental basis for use on lands excluded from the project under this section, on terms and conditions to be approved by the Secretary of the Interior.

It was not the intention of Congress to exclude permanently unproductive land from the project in any case where the United States is under contract to furnish a water right to the land now determined to be permanently unproductive and the contractor is unwilling so to amend the contract as to consent to the elimination of such land. If the landowner in such case elects to continue payment of charges on land now found to be permanently unproductive, he may do so, and would be entitled to continuation of water service.

Under section 45 of the act, before any contract referred to in the preceding paragraph may be amended so as to release any water user under contract with the United States to pay construction and operation and maintenance charges on land now found to be permanently unproductive from such obligation, it is required that the Secretary secure the execution of a contract by a water users' association or irrigation district whereby such association or district shall assume what is commonly referred to as "joint liability," that is, shall be obligated to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive lands shall have been suspended in the manner and to the extent authorized by the act. Where the United States is under contract to furnish water for land now found, in accordance with the act, to be permanently unproductive, not only the owner of the land but also any interested mortgagees, or other lienors are entitled to a notice and an opportunity to consent or object to the severance of the water right. This is especially of importance where the mortgagee or other lienor acquired his lien with a view to the enhanced value of the land due to the presence of the water right. Notice must be given accordingly.

The provision regarding disposition of water formerly appurtenant to permanently unproductive land applies to all projects except the Uncompahgre and Umatilla, where special provision is made otherwise. The water thus severed from unproductive land should be disposed of only where there is a sufficient supply to irrigate all of the remaining productive land. Where a shortage exists the water so severed should be utilized to supplement the insufficient supply available for the productive lands of the project.

The first proviso is interpreted to mean that the water right severed from the unproductive land shall be disposed of by the United States giving preference to landowners within the project proper rather than to Warren Act contractors or other landowners outside of the boundaries of the project or on some other project than that from which severed.

Surplus water temporarily available under the second proviso should not be furnished for use on permanently unproductive land excluded from the project until after express authority has been secured and terms and conditions covering such service approved by the Secretary of the Interior. The superintendent should submit report in each case where the use of water is so desired. The report should be accompanied by recommendation of the irrigation district or water users' association.

SEC. 42. The construction charges heretofore paid on permanently unproductive lands excluded from the project shall be applied as a credit on charges due or to become due on any remaining irrigable land covered by the same water-right contract or land taken in exchange as provided in section 44 of this act. If the charges so paid exceed the amount of all water-right charges due and unpaid, plus the construction charges not yet due, the balance shall be paid in cash to the holder of the water-right contract covering the land so excluded or to the irrigation district affected; which in turn shall be charged with the responsibility of making suitable adjustment with the landowners involved. Should all the irrigable lands of a water-right applicant be excluded from the project as permanently unproductive, and no exchange be made as provided in section 44 hereof, the total construction charges heretofore paid, less any accrued charges on account of operation and maintenance, shall be refunded in cash, the water-right contract shall be canceled, and all liens on account of water-right charges shall be released.

Before credits may be properly applied under the foregoing section and the accounts handled as outlined, it will be necessary to ascertain from each water-right applicant affected whether an exchange is to be made under section 44. Suitable blanks will be provided for submitting request for application of credits and for refund of charges. Vouchers providing for refund of charges in cash should be prepared and forwarded to the commissioner's office for appropriate action. There must accompany the voucher a showing regarding whether or not there are any outstanding mortgages or liens, the amount covered by such mortgages or liens, and the names and addresses of the mortgagees or other lien holders. This is necessary because of the proviso in section 44 which requires the Secretary to take into consideration the rights and interests of lien holders.

Where contracts are in force with irrigation districts which collect water charges, adjustments should be made through the medium of or in cooperation with such districts as the foregoing section provides.

Where all the irrigable lands of a water-right applicant are excluded, no exchange is made and the construction charges paid are refunded in cash, the water-right contract will be canceled by order of the Secretary, by whom also liens on account of charges will be released where individual water-right applications are in force. Where liens have attached by means of tax levies and assessments made through irrigation districts, the necessary procedure will be worked out in such way as may be required by the State laws applicable. In all cases where action is to be taken under the last sentence of section 42, report should be made by the superintendent through the office of the district counsel, who will submit recommendation regarding the procedure necessary to secure release of liens. All other adjustments under this section, except as otherwise specified, may be made by the project superintendent, subject to appeal to be taken within 30 days to the commissioner and Secretary by any applicant aggrieved by the action taken or decision made.

SEC. 43. The payment of all construction charges against said areas temporarily unproductive shall remain suspended until the Secretary of the Interior shall declare them to be possessed of sufficient productive power properly to be placed in a paying class, whereupon payment of construction charges against such areas shall be resumed or shall begin as the case may be. While said lands are so classified as temporarily unproductive and the construction charges against them are suspended, water for irrigation purposes may be furnished upon payment of the usual operation and maintenance charges, or such other charges as may be fixed by the Secretary of the Interior, the advance payment of which may be required, in the discretion of the said Secretary. Should said lands temporarily classed as unproductive, or any of them, in the future be found by the Secretary of the Interior to be permanently unproductive, the charges against them shall be charged off as a permanent loss to the reclamation fund and they shall thereupon be treated in the same manner as other permanently unproductive lands as provided in this act.

No affirmative action by the landowner is necessary to secure the suspension provided for in this section. The methods of handling suspended charges heretofore in vogue no doubt will be found sufficient in general to meet the requirements under this section. Where any doubt is entertained regarding the proper procedure special instructions should be requested of the commissioner's office.

Recommendations should be submitted by the project superintendent through the Chief Engineer's office regarding the charges to be made for water service to lands upon which payment of construction charge is temporarily suspended, specifying whether advance payment should be required. In the absence of special reasons to the contrary, advance payment should be required. The report should be accompanied by the views and recommendations of the irrigation district or water users' association.

SEC. 44. Settlers who have unpatented entries under any of the public land laws embracing lands which have been eliminated from the project, or whose entries under water rights have been so reduced that the remaining area is insufficient to support a family, shall be entitled to exchange their entries for other public lands within the same project or any other existing Federal reclamation project, with credit under the homestead laws for residence, improvement, and cultivation made or performed by them upon their original entries and with credit upon the new entry for any construction charges paid upon or in connection with the original entry: *Provided*, That when satisfactory final proof has been made on the original entry it shall not be necessary to submit final proof upon the lieu entry. Any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project contiguous to or in the vicinity of the farm unit reduced by elimination, with all credits in this section hereinbefore specified in lieu of the lands eliminated. Owners of private lands so eliminated from the project may, subject to the approval of the Secretary of the Interior, and free from all encumbrances, relinquish and convey to the United States lands so owned and held by them, not exceeding an area of one hundred and sixty acres, and select an equal area of vacant public land within the irrigable area of the same or any other Federal reclamation project, with credit upon the construction costs of the lands selected to the extent and in the amount paid upon or in connection with their relinquished lands, and the Secretary of the Interior is hereby authorized to revise and consolidate farm units, so far as this may be made necessary or advisable, with a view to carrying out the provisions of this section: *Provided further*, That the rights extended under this section shall not be assignable: *And provided further*, That in administering the provisions of this section and section 42, the Secretary of the Interior shall take into consideration the rights and interests of lien holders, as to him may seem just and equitable: *Provided further*, That where two entrymen apply for the same farm unit under the exchange provisions of this section, only one [of] whom is an ex-service man, as defined by the joint resolution of January 21, 1922 (Forty-second Statutes, page 358), the ex-service man shall have a preference in making such exchange.

Before an exchange of an unpatented entry may be made under the first sentence of this section, except where the total area is eliminated, a finding must be made that the entry has been reduced to such an extent that the remaining area is insufficient to support a family. The decision of the superintendent on this feature, concurred in by the Director of Reclamation Economics, will be final, subject to the usual right of appeal within 30 days to the Commissioner, Bureau of Reclamation, and the Secretary. When appeals are forwarded a report should be made in each case showing—

(*a*) Area eliminated.

(*b*) Area remaining.

(*c*) Classification of the land remaining.

(*d*) The character and value of the improvements upon the remaining area.

(*e*) Any and all other facts not enumerated which would have a bearing upon the matter to be determined.

If the Superintendent and Director of Reclamation Economics makes an affirmative finding that the area of the entry has been so reduced that the remaining land is insufficient to support a family or if the total area is eliminated, the entryman will be eligible for application to enter any available land for which application is made. The lands embraced in the original entry or farm unit must be relinquished to the United States free of all encumbrances, and the relinquishment with satisfactory showing that the land so relinquished is free of all incumbrance, together with the application to make new entry must be presented to the proper local land office with the approval of the Superintendent and Director of Reclamation Economics.

The section further provides that an entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land, on the same project contiguous to or in the vicinity of the farm unit reduced by such elimination. This right is not dependent upon a finding that the area remaining is insufficient to support a family, but no entry for additional lands under this section will be permitted unless at least 5 acres have been eliminated from the original entry. Another condition is, of course, that there be available public land which may be entered. Preferably land to be entered should be contiguous to the farm unit reduced. However, the prospective entryman under the law has the election to enter either contiguous land if available or land on the same project in the vicinity. The term "in the vicinity" within the purview of this section is interpreted to mean land so located that it may be consolidated with the remaining area of the farm unit reduced so that the two areas may be handled as one farm. This will vary depending upon the accessibility of the tracts involved. It will also be influenced to a considerable extent by the presence or absence of canals, drainage ditches, and other physical barriers which obstruct communication, by the character and location of roads between the areas involved, and other physical features which go to render it feasible for the entryman to handle the two areas as a whole. Applications to enter noncontiguous land under section 44 must be accompanied by the certificate of the project superintendent of the Bureau of Reclamation that if the proposed entry is allowed, the old and new land held by the entryman may in his opinion feasibly be worked as one farm unit.

As a prerequisite to the owners of private lands which have been eliminated from the project selecting or entering land of an area equal to that eliminated, there must be presented to the Superintendent and forwarded by him with appropriate indorsement to the proper local land office the following papers:

(*a*) An application describing the land desired by way of exchange.

(*b*) Warranty deed from the landowner conveying to the United States the lands eliminated.

(*c*) Satisfactory showing of ownership by the person executing the warranty deed.

(*d*) A satisfactory showing that the land so conveyed is free of all incumbrance.

(*e*) Certificate of project superintendent, required by last sentence of preceding paragraph, if applicable.

All papers when so filed will be forwarded by the local land office through the Commissioner of the General Land Office to the Secretary of the Interior for his approval.

To summarize: Section 44 covers three situations under which an exchange of entries may be permitted: (1) Settlers on unpatented entries entirely eliminated from the project, or whose entries have been so reduced that the remaining area is insufficient to support a family; (2) where there is some elimination in an unpatented entry but not enough to destroy the ability of the unit to support a family; and (3) owners of private lands "so eliminated from a project."

From the above it will be noted that as to settlers on unpatented land, the right to make lieu entry is specifically conferred both where the original is insufficient to support a family and where the elimination as made does not result in this condition, but the latter is subject to the limitation that the new area selected must consist of land contiguous to or in the vicinity of the original unit.

The owner of a tract of private land having a project water right, and permitted by the act to be eliminated in whole or in part from the project may, subject to the approval of the Secretary of the Interior, select an equal area of vacant public land. If the whole of such privately owned tract is so eliminated, the owner thereof may select an equal irrigable area of vacant public land within the limits of any other Federal reclamation project. If only a portion of such privately owned tract is so eliminated, the owner thereof may select an equal irrigable area of vacant public land within the limits of the same project, but such equal irrigable area so selected must be in the vicinity of the retained land of such owner, so that in the opinion of the Secretary the new and retained areas may be worked advantageously as one farm. This regulation is intended to equalize the conditions applicable to private land owners and to entrymen, when claiming the benefits of section 44. For the same reason no exchange of private for public land will be permitted when the acreage eliminated is less than five acres. Private landowners making such exchange are entitled to credit upon the construction costs of the selected lands to the extent and in the amount of the construction charges paid upon or in connection with the relinquished land. The construction charge upon any land taken in exchange will be that fixed for such land by the applicable public notice, district contract, or association contract, as the case may be.

Section 45 being of some length will be quoted and commented upon by paragraphs, of which there are four.

Section 45 (par. 1):

> The Secretary of the Interior is hereby authorized in his discretion, to amend any existing water-right contract to the extent necessary to carry out the provisions of this act, upon request of the holder of such contract. The Secretary of the Interior, as a condition precedent to the amendment of any existing water-right contract, shall require the execution of a contract by a water users' association or irrigation district whereby such association or irrigation district shall be required to pay to the United States, without regard to default in the payment of charges against any individual farm unit or tract of irrigable land, the entire charges against all productive lands remaining in the project after the permanently unproductive lands shall have been eliminated and the charges against temporarily unproductive areas shall have been suspended in the manner and to the extent authorized and directed by this act.

The foregoing provision is referred to under section 41 of the act, but is of sufficient importance to warrant further comment and emphasis. In the first 40 sections of this act, the details of the charge offs and suspensions on each individual project are recited, and in the administrative provisions of the act in sections 41 to 50, inclusive, are set forth the terms and conditions under which the adjustments made in the earlier sections of the act may be carried out.

Paragraph 1 of section 45 gives the Secretary authority in his discretion and upon the request of the holder of such contract to amend any existing water-right contract to the extent necessary to carry out the adjustments. No adjustment involving the amendment of an existing contract may be made except with the consent of the contractor and in addition to the consent of the contractor the Secretary must require as a condition precedent to the amendment the execution of a contract by a water users' association or district whereby such association or district assumes joint liability for payment of the construction charges. The individuals on a given project must organize (if the required organization does not already exist), either as a water users' association or an irrigation district before it will be possible for the individuals to secure any relief under this act, except the suspension of construction charges on temporarily unproductive land. In other words, Congress has provided that certain charges and costs may be eliminated, but has also provided that to secure this write off the owners of the productive lands must agree to be jointly liable for the remaining cost. Where a district or an association is already in existence and has entered into a repayment contract providing for complete joint liability, the requirement named in the first paragraph of this section is satisfied and no further contract will be required as a condition precedent to granting relief to individuals.

Section 45 (par. 2):

> The Secretary is authorized in his discretion, upon request of individual water users or districts, and upon performance of the condition precedent above set forth, to amend any existing water-right contract to provide for increase in the time for payment of construction charges, which have not then accrued, to the extent that may be necessary under the conditions in each case, subject to the limitation that there shall be allowed for repayment not more than forty years from the date the first payment matured under the original contract, and also to extend the time for payment of operation and maintenance or water-rental charges due and unpaid for such period as in his judgment may be necessary not exceeding five years, the charges so extended to bear interest payable annually at the rate of 6 per centum per annum until paid, and to contract for the payment of the construction charges then due and unpaid within such term of years as the Secretary may find to be necessary, with interest payable annually at the rate of 6 per cent per annum until paid.

Under the second paragraph, and provided the condition precedent named in the first paragraph is satisfied, the Secretary is authorized to increase the time for payment of construction charges to not more than 40 years from the date the first payment matured under the original water-right contract. The period of 40 years could not begin to run from the date of a proposed contract with a district or an association.

The time of payment for due and unpaid operation and maintenance charges may be extended for not exceeding five years, the charges so extended to bear interest payable annually at the rate of 6 per cent per annum until paid. The time of payment for due and unpaid construction charges may be extended for such terms of years as the Secretary may find necessary, with interest payable at the rate of 6 per cent per annum until paid. This provision does not permit the deferment or a period of suspension in the due dates of construction charge installments that are not due at the date the contract becomes effective. The act does not require that the 40 annual payments be equal and when the conditions warrant the installments may be graduated in such manner as the Secretary may specify. The matter of extending the dates of payment is entirely within the discretion of the Secretary and a district or association desiring relief should file application therefor with the superintendent setting forth the time of the extension desired and all of the conditions under which the extension is believed warranted.

Section 45 (par. 3):

> The Secretary is further authorized, in his discretion, to grant the relief provided for in section 4, act of December 5, 1924 (Forty-third Statutes at Large, page 701), to any of the projects mentioned in this act, without requiring such project to take over the care, operation, and maintenance of the project works.

Subsection G of section 4, act of December 5, 1924, required the taking over of operation of the irrigation works by the water-users' organization when the project or division was two-thirds under water-right contract as a prerequisite to the granting of the benefits provided for in said act. Paragraph 3 of section 45 of the present act merely amends the 1924 act by substituting the judgment and discretion of the Secretary for the mandatory requirement named in subsection G.

Section 45 (par. 4):

> The decision of the Secretary as to the necessity for amending any such contract shall be conclusive: *Provided*, That nothing in this act shall prevent the execution of any contract heretofore negotiated or in connection with which negotiations have been heretofore opened in good faith or which may be hereafter opened in good faith under the act approved December 5, 1924 (Forty-third Statutes at Large, page 701), and which shall be executed on or before January 1, 1927, unless the water users affected elect to have the contract governed by this section: *Provided further*, That in the execution of any contract provided for in the last proviso, the Secretary of the Interior shall have authority to arrange for payment of construction charges by any project or division for the calendar years 1926, 1927, and 1928 in proportion to the state of development of the project in those years: *Provided further*, That the Secretary of the Interior is authorized to complete and execute the supplemental contract, now being negotiated and which has been approved as to form by the Secretary, between the United States and the Belle Fourche Irrigation District and at the expiration of said supplemental contract to enter into a permanent contract on behalf of the United States with said District in accordance with the terms of said supplemental contract.

The first sentence needs no interpretation, it being clear from the language used that Congress intended that the Secretary should decide all questions as to the necessity for amending existing contracts.

The first proviso permits for the limit of time named, the continuation, or inauguration, of negotiations with those districts or associations desiring the crop-production plan of repayment. The negotiations must result in an executed contract before January 1, 1927; otherwise the repealing provisions of section 47 of the act under consideration will become effective and prevent the execution of a contract upon the crop-production basis. The important element here is one of time and a clear understanding by the water users that negotiation alone will not withhold the bar of the statute. Many contracts providing for payment on a crop-production basis have been approved as to form by the department but such contracts can not under the present status of the law be made effective unless actually executed by all parties before January 1, 1927.

The last proviso save one to paragraph 4 authorizes the arrangement, at the discretion of the secretary, of a graduation in construction installments during the years 1926, 1927, and 1928 in contracts executed under the act of December 5, 1924. This is a matter which would be handled by negotiation and no definite instructions appear necessary since the decision in each case would depend upon the development of the particular project in the years named.

GENERAL DISCUSSION

From the publicity which has been given on all projects to the work of the board of survey and adjustments, the classification of lands and subsequent reviews, as well as the action subsequently taken by Congress, it may be assumed the water users are fairly familiar with the general significance of the act. However, in order to forestall any possible neglect, the substance of the law and these regulations should be discussed by the project superintendent and the district counsel with the governing board of the water users, at the first convenient regular meeting.

At such meeting many doubtful points may be clarified and interpreted by the district counsel and the project superintendents, and, if necessary, any doubtful questions as to the interpretation of the law may be submitted to the commissioner for decision.

Full publicity should be given to the availability of the benefits of this act in the local press in such manner as may be decided on by the district or water-users' board. This is more distinctly a local problem because most projects present dissimilar conditions with respect to the applications of the act, which must be appropriately treated both from the standpoint of conveying the information to the water users who are interested as well as in the application of the most effective remedy.

Lists and plats should be made available in the district or water users' association office as well as in the project office (in case these are located in different places) so that each water user may become acquainted with the results of the classification as it affects his individual holding, particularly in reference to the number of acres and the general location of the land in his tract upon which the payment of charges is authorized to be suspended or as to which elimination from the irrigable area is permitted. Each settler seeking relief under the act should state his intention as to the future operation of his holding at the earliest possible date because in most cases the opportunities for suitable exchanges are necessarily limited. Appropriate blanks will be prepared and distributed for this purpose at an early date. If all or practically all of a farm unit, not patented, is land upon which a temporary suspension of charges is authorized by the act, the owner may apply for an exchange, which is grantable under subsection M of section 4 of the act of December 5, 1924 (43 Stat. 672), if the Secretary finds that the unit is insufficient to support a family. Or such unit holder may continue the water service with payment of only operation and maintenance charges upon the land as to which the payment of the construction charges is authorized to be suspended. If all or practically all is land permanently unproductive, he may exchange or accept the refund or he may maintain his existing status by continuing his payments. He may also accept the refund, permit the cancellation of his water right, and rent surplus water if any is available. Should a small percentage only of the holding be permanently unproductive lands, credit for charges paid on the excluded area may be applied to the remaining irrigable land. Even in cases where the remaining area is insufficient to support a family, the owner may in consideration of his improvements, etc., prefer to remain, taking advantage of the credits. In making an exchange of units, it would not be equitable, nor in fact workable, for the Government to accept lands with outstanding liens and the fact that the entry or tract in private ownership must be relinquished or deeded to the United States free of all encumbrances should be stressed in the notice to those affected in view of the large number of mortgages known to exist on some projects.

Cases involving the elimination of a small percentage only, where the remaining area is sufficient to support a family and where a lieu entry for the eliminated portion is desired rather than the application of credit to the remaining area, must of necessity be considered and decided upon the individual merits of each and not by the application of a hard and fast rule. The important element here is the availability of an equivalent or suitable amount of land contiguous to or in the vicinity of the remaining land. The primary duty imposed by the adjustment act is believed to be directed toward those cases where classification has established that the unit as a whole is unsuitable and insufficient to support a family, and these cases should be given the earliest consideration.

ELWOOD MEAD,
Commissioner, Bureau of Reclamation.
WILLIAM SPRY,
Commissioner, General Land Office.

Approved August 20, 1926.

E. C. FINNEY,
First Assistant Secretary.

(Forms omitted.)

REGULATIONS RE: SECTIONS 41 TO 45, ACT OF MAY 25, 1926 (44 STAT. 636)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 4, 1926.

Registers, United States Land Offices.

SIRS: There is inclosed a copy of the regulations approved by the First Assistant Secretary of the Interior on August 20, 1926,[d] governing the administration of sections 41 to 45, inclusive, of the act of May 25, 1926 (44 Stat. 636). Your particular attention is called to section 44 of the act providing for exchange of entries for settlers who have unpatented entries embracing lands which have been eliminated from the irrigation project, or whose entries under the water rights have been so reduced that the remaining area is unsufficient to support a family. Section 44 also provides that any entryman whose entry or farm unit is reduced by the elimination of permanently unproductive land shall be entitled to enter an equal amount of available public land on the same project, contiguous to or in the vicinity of the farm unit reduced by elimination. However, the regulations on page 5, set forth that no entry for additional lands under section 44 will be permitted unless at least 5 acres have been eliminated from the original entry. When such an exchange or additional entry is applied for, you will give same the current serial number, and the proper fee and commissions will be collected in each case. (See 45 L. D. 390). The new application must give the land-office number and the description of the former or original entry. Accordingly, if such an application is filed in your office showing approval by the project superintendent, you will forward the papers to this office in the usual manner for consideration.

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[d] The regulations of Aug. 20, 1926, are printed on p. 1255 et seq.

You will make proper reference to this order in the file of your office, be governed accordingly, and acknowledge receipt hereof.

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

[Reported, 52 LD-511]

CIRCULAR NO. 1176

REGULATIONS UNDER THE ACT OF APRIL 21, 1928 (45 STAT. 439), RELATIVE TO TAXATION OF ENTRIES WITHIN RECLAMATION PROJECTS, BEFORE ISSUANCE OF FINAL CERTIFICATE

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 27, 1928.

Registers, United States Land Offices.

GENTLEMEN: An act approved April 21, 1928 (45 Stat. 439), reads as follows:

> That the lands of any homestead entryman under the act of June 17, 1902, known as the Reclamation Act, or any act amendatory thereof or supplementary thereto, may, after satisfactory proof of residence, improvements, and cultivation, and acceptance of such proof by the General Land Office, be taxed by the State or political subdivision thereof in which such lands are located, in the same manner and to the same extent as lands of a like character held under private ownership may be taxed.
>
> SEC. 2. That the lands of any desert-land entryman located within an irrigation project constructed under the Reclamation Act and obtaining a water supply from such project and for whose land water has been actually available for a period of four years, may likewise be taxed by the State or political subdivision thereof in which such lands are located.
>
> SEC. 3. That all such taxes legally assessed shall be a lien upon the lands and may be enforced upon said lands by the sale thereof in the same manner and under the same proceeding whereby said taxes are enforced against lands held under private ownership; *Provided*, That the title or interest which the State or political subdivision thereof may convey by tax sale, tax deed, or as a result of any tax proceeding shall be subject to a prior lien reserved to the United States for all the unpaid charges authorized by the said act of June 17, 1902, whether accrued or otherwise, but the holder of such tax deed or tax title resulting from such tax shall be entitled to all the rights and privileges in the land of an assignee under the provisions of the act of June 23, 1910 (Thirty-sixth Statutes, page 592).

The purpose of the law is to permit taxation by States, or political subdivisions thereof, prior to the issuance of final certificate, of lands embraced in reclamation homestead entries and in desert-land entries within irrigation projects constructed under the reclamation act, and obtaining a water supply from a reclamation project.

Reclamation homestead entries are made subject to such taxation after the submission of satisfactory final proof under the ordinary provisions of the homestead law, and upon the acceptance thereof by the Commissioner of the General Land Office, and desert-land entries located within irrigation projects, constructed under the reclamation act, at any time after water from said project has been available for the irrigation of the lands in the entry for four years.

Taxes legally so assessed constitute a lien upon the land subject to the prior lien of the United States for all unpaid charges authorized by the reclamation act, whether accrued or otherwise, and such lien may be enforced by the State or political subdivision thereof by the sale of the lands under proceedings had as in case of lands held in private ownership.

No tax assessed or levied prior to April 21, 1928, the date of the act, is validated thereby.

In case of the sale for taxes of lands included in a reclamation homestead entry, or a desert-land entry within an irrigation project constructed under the reclamation act and obtaining its water supply from a reclamation project, the holder of the tax deed or tax title resulting from such tax sale shall be entitled to all the rights and privileges of an assignee under the provisions of the act of June 23, 1910, (36 Stat. 592), as to reclamation homestead entries, and section 2 of the act of March 28, 1908, (35 Stat. 52), as to desert-land entries, only when application for recognition as assignee has been filed in accordance with the governing regulations[e] (see 47 L. D. 417 as to homestead entries and 50 L. D. 453 as to desert-land entries), and also satisfactory proof of such tax title, and showing that the equity of redemption has expired. After acceptance by the Commissioner of the General Land Office of such evidence as satisfactory, the name of such assignee shall be indorsed upon the records of the general and local land offices as entitled to the rights of one holding a complete and valid assignment under said act of June 23, 1910, or the act of March 28, 1908, supra, and such person may at any time thereafter receive patent upon submitting satisfactory final proof, and the proof of reclamation required by the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in case of desert-land entries, the act of March 3, 1877 (19 Stat. 377), as amended by the act of March 3, 1891 (26 Stat. 1095), making the payments required by said acts. In all such cases the purchaser at tax sale must file in the local land office either the original or a duly certified copy of the tax deed, which evidence must be transmitted to this office for consideration the same as in ordinary assignment cases before the record may be placed in the name of the purchaser as assignee.

In cases of application for exchange of reclamation homestead entries in whole or in part (of lands not sold at tax sale) where the proof as to residence, improvements, and cultivation in support of the base land has been accepted as satisfactory (see sec. 44 of the act of May 25, 1926, 44 Stat. 636, and the regulations thereunder in 51 L. D. 525)[f], in cases where application is made to enter lands formerly included in a reclamation homestead entry which was canceled after acceptance of proof of residence, improvements, and cultivation;

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[e] See Circulars Nos. 716, p. 1243 and 474, p. 415.

[f] See Instructions of August 20, 1926, p. 1255.

in cases where application is made to enter lands formerly embraced in a desert-land entry, which obtained its water from a Federal reclamation project, and was canceled after four years from the date of availability of water or where final proof is submitted on a pending desert-land entry after four years from the date water was available therefor; there must be furnished, in addition to the usual evidence, a certificate by the proper tax officer showing that there are no unpaid taxes or tax sales charged against the land or tax deeds outstanding and that the accrued taxes for the current year have been provided for.

When relinquishments of entries or parts of entries involving taxable lands are filed with the register of a local land office, he will transmit the same to the General Land Office without noting the same on his records, unless there is furnished, as set forth in the preceding paragraph satisfactory evidence that there are no unpaid taxes charged against, or unredeemed sales of, the lands relinquished, in which case the relinquishment may be accepted or noted as in ordinary cases.

In case of exchange or the cancellation of entries involving lands which have been taxed or are subject to taxation, the register of the local land office will at once, upon the consummation of the exchange or the notation of the cancellation, notify the proper taxing authorities thereof, to the end that such lands may be relieved from future taxation.

The register of the local land office will, upon application therefor, furnish the proper taxing authorities lists of reclamation homestead entries upon which final proof has been submitted and accepted under the ordinary provisions of the homestead law, and of desert-land entries where water from a Federal irrigation project has been available for four years, as provided in instructions of October 8, 1907 (36 L. D. 194), and of April 16, 1910 (38 L. D. 575). Circular of July 8, 1922 (49 L. D. 168), is hereby revoked.[g]

Very respectfully,

William Spry, *Commissioner*

Approved November 27, 1928.

E. C. Finney,
First Assistant Secretary.

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[g] The Circular of Apr. 16, 1910 (38 L. D. 575), was revoked by Circular No. 198, p. 1274. See instructions of Oct. 8, 1907, p. 1270 as to lists of lands for taxation purposes. The revoked Circular of July 8, 1922 (49 L. D. 168), was issued as Circular No. 838.

in cases where application is made to enter lands formerly embraced in a desert-land entry, which obtained its water from a Federal reclamation project, and was canceled after four years from the date of availability of water or where final proof is submitted on a pending desert-land entry after four years from the date water was available therefor; there must be furnished, in addition to the usual evidence, a certificate by the proper tax officer showing that there are no unpaid taxes or tax sales charged against the land or tax deeds outstanding and that the accrued taxes for the current year have been provided for.

[9a] When relinquishments of entries or parts of entries involving taxable lands are filed with the register of a local land office, he will transmit the same to the General Land Office without noting the same on his records, unless there is furnished, as set forth in the preceding paragraph satisfactory evidence that there are no unpaid taxes charged against, or unredeemed sales of, the lands relinquished, in which case the relinquishment may be accepted or noted as in ordinary cases.

In case of exchange or the cancellation of entries involving lands which have been taxed or are subject to taxation, the register of the local land office will at once, upon the consummation of the exchange or the notation of the cancellation, notify the proper taxing authorities thereof, to the end that such lands may be relieved from future taxation.

The register of the local land office will, upon application therefor, furnish the proper taxing authorities lists of reclamation homestead entries upon which final proof has been submitted and accepted under the ordinary provisions of the homestead law, and of desert-land entries where water from a Federal irrigation project has been available for four years, as provided in instructions of October 8, 1907 (36 L. D. 131), and of April 18, 1910 (38 L. D. 575). Circular of July 8, 1922 (49 L. D. 163), is hereby revoked.

Very respectfully,

William Spry, *Commissioner.*

Approved November 27, 1925.

E. C. Finney,
First Assistant Secretary.

[9a] The Circular of Apr. 18, 1910 (38 L. D. 575), was revoked by Circular No. 195 p. 1274; See instructions of Oct. 8, 1907, p. 1270 as to lists of lands for taxation purposes. The revoked Circular of July 8, 1922 (49 L. D. 163), was issued as Circular No. 828.

RECORDS

[Reported, 32 L. D. 635]

RECORD—PRODUCTION IN COURT—ACT OF APRIL 19, 1904

Department of the Interior,
General Land Office,
Washington, D. C., May 18, 1904.

To the Registers, United States Land Offices.

Sirs: Your attention is called to the act of April 19, 1904 (33 Stat. 186), which reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the register of any United States land office shall be served with a subpœna duces tecum or other valid legal process requiring him to produce, in any United States court or in any court of record of any State, the original application for entry of public lands or the final proof of residence and cultivation or any other original papers on file in the General Land Office of the United States on which a patent to land has been issued or which furnish the basis for such patent, it shall be the duty of such register to at once notify the Commissioner of the General Land Office of the service of such process, specifying the particular papers he is required to produce, and upon receipt of such notice from any register of a United States land office the Commissioner of the General Land Office shall at once transmit to such register the original papers specified in such notice, and which such register is required to produce, and to attach to such papers a certificate, under seal of his office, properly authenticating them as the original papers upon which patent was issued; and such papers so authenticated shall be received in evidence in all courts of the United States and in the several State courts of the States of the Union: *Provided,* That the Secretary of the Interior shall make rules and regulations to secure the return of such documents to the General Land Office, after use in evidence, without cost to the United States.

As soon as any subpœna or process mentioned in this act shall have been served upon you, you should at once forward a copy thereof to this office where appropriate action thereunder will be taken.

All papers and records, forwarded to you under the provisions of this act, should be constantly retained in your possession and always kept under your personal control, and in no event should they be permitted to be attached as exhibits or filed of record in any cause pending in any court, but they should, after they have been used in evidence, be inclosed by you in secure envelopes and returned to this office by registered mail.

Very respectfully,

W. A. Richards, *Commissioner.*

Approved.

Thos. Ryan, *Acting Secretary.*

[Reported, 35 L. D. 514]

FEES OF SURVEYORS GENERAL—CERTIFIED COPIES OF PLATS AND RECORDS

Department of the Interior,
General Land Office,
Washington, D. C., April 15, 1907.[a]

The United States Surveyor General.

Sir: Under the terms of office circular dated October 13, 1886 (5 L. D. 190), you were permitted to furnish certified copies of plats and records in your office, and to receive a fee therefor under certain conditions.

As it is considered that the continuance of this practice is detrimental to the best interests of the public service, you are hereby advised that it must be discontinued by you on and after your receipt of this communication, which you will acknowledge at once.

Hereafter, when application is made for exemplified copies of plats, or any other records in your office, you will first furnish the applicant a memorandum of the exact cost thereof at the rates established by law for registers and receivers for like services, and require him to deposit the amount in a designated United States Depository, to the credit of the Treasurer of the United States, and upon presenting to you the duplicate certificate you can then cause them to be prepared during office hours and furnish them to the applicant.

The duplicate certificates thus received you will forward to this office in the usual manner.

Very respectfully,

R. A. Ballinger, *Commissioner.*

Approved:

J. R. Garfield, *Secretary.*

[Reported, 36 L. D. 194]

LISTS OF LANDS FOR TAXATION PURPOSES—ACT OF MARCH 3, 1883

Department of the Interior,
General Land Office,
Washington, D. C., October 8, 1907.

Registers and Receivers, United States Land Offices.

Gentlemen: The act of March 3, 1883 (22 Stat. 484), provides that upon application by the proper State or Territorial authorities, registers and receivers shall—

> furnish for the purpose of taxation a list of all lands sold in their respective districts, together with the names of the purchasers, and shall be allowed to receive compensation for same not to exceed ten cents per entry.

The act of August 4, 1886 (24 Stat. 239), and instructions approved April 22, 1898 (26 L. D. 657), as modified by circular approved May 20, 1905 (33 L. D. 627, 631), govern the disposition of such fees.

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[a] Amended by circular of Oct. 19, 1907, p. 1271. See circulars of Feb. 21, 1908, p. 1272, and May 26, 1911 (No. 19), p. 1274.

It is believed that it is within the spirit and intent of the act first cited for you to furnish, upon like application, and for the compensation therein stated, lists of canceled final entries, so that the lands may be relieved from improper taxation. Therefore, when application is made by the proper authorities, you will furnish such lists.

Very respectfully,

R. A. Ballinger, *Commissioner.*

Approved.

James Rudolph Garfield, *Secretary.*

[Reported, 36 L. D. 125]

FEES OF SURVEYORS GENERAL—CERTIFIED COPIES OF PLATS AND RECORDS

Department of the Interior,
General Land Office,
Washington, D. C., October 19, 1907.[b]

United States Surveyors General.

Sirs: The circular of this office dated April 15, 1907 (35 L. D. 514), revoking office circular dated October 13, 1886 (5 L. D. 190), relative to the furnishing to applicants exemplified copies of your plats or any other records in your office, is hereby amended to read as follows:

Hereafter when application is made for exemplified copies of your plats or any other records in your office, you will first furnish the applicant with a memorandum of the exact cost thereof at the rates established by law for registers and receivers for like services, and require him to pay or remit the amount to you in your official capacity as surveyor general, and upon receipt of the amount you will then cause the copies to be prepared during office hours and furnish them to the applicant. All such moneys must be promptly receipted for.

At the end of each week you are directed to deposit the aggregate amount received by you to the credit of the Treasurer of the United States, on account of "Receipts for Furnishing Copies of Records," and forward the duplicate certificates of deposit to this office.

In rendering to this office your consolidated account current for each quarter of the fiscal year, Form No. 4–661a, you are directed to credit the United States therein with the aggregate amount received by you during the period for which the account is rendered, and debit the United States with the deposits made by you to the credit of the Treasurer of the United States during the said period. The said credits and debits should appear in one of the blank columns provided in the account current.

You are also directed to furnish with the said account current an abstract showing in detail all the moneys received by you during the period covered thereby, giving date of the payment, name of the payee, and the amount received in each case.

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[b] See circulars of Feb. 21, 1908, p. 1272, and May 26, 1911 (No. 19), p. 1274.

The provisions of this circular are to take effect immediately upon your receipt thereof, which you will acknowledge at once.

Very respectfully,

R. A. BALLINGER, *Commissioner.*

Approved.

JAMES RUDOLPH GARFIELD, *Secretary.*

[Reported, 36 L. D. 282]

FEES OF SURVEYORS GENERAL—CERTIFIED COPIES OF PLATS AND RECORDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 21, 1908.

United States Surveyors General.

SIRS: It appears that the rates established by law for the services of registers and receivers in furnishing exemplified copies of plats and other records of their offices, are entirely inadequate to meet the expense of like services when rendered by surveyors general, and it is therefore ordered that hereafter you will collect for such services the exact cost thereof, as nearly as may be, taking into account the value of the material, the time consumed, and the compensation of the employees doing the work.

Inasmuch as the charges to be made for like services by the surveyor general of Louisiana are fixed by law (4 Stat. 494), the foregoing instructions do not apply to this office.

Very respectfully,

R. A. BALLINGER, *Commissioner.*

Approved.

FRANK PIERCE, *First Assistant Secretary.*

[Reported, 38 L. D. 312]

FEES—CERTIFIED COPIES OF RECORDS—REGISTERS AND RECEIVERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 22, 1909.[c]

Registers and Receivers and United States Surveyors General.

SIRS: The regulations contained in the circulars to surveyors-general of April 15, 1907 (35 L. D. 514), October 19, 1907 (36 L. D. 125), and February 21, 1908 (36 L. D. 282), as far as they prohibit the acceptance of personal fees for copies of records and require the preparation of such copies during office hours, are hereby extended to the offices of registers and receivers and you are advised that hereafter the performance of any service by you or by the employees of your offices for which personal remuneration or compensation is received is hereby prohibited, except as to cases where an officer or employee receives fees or compensation expressly allowed by law. Nor shall such service be performed save in the course of official duties and during office hours, and persons not officially connected with any office, even though Government employees, shall not be admitted to that office outside of office hours, unless the public interests are involved in the purpose for which such admission is desired or requested, in which event you are authorized to extend the working hours for such purpose.

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[c] See circulars of Feb. 21, 1908, p. 1272, and May 26, 1911 (No. 19), p. 1274.

When certified copies of records are requested and the pressure of public business will not permit of the work being done by the office force, the parties desiring same, if desk room is available, may be permitted to make such copies, but before certification by you copies thus made must be carefully compared by your office force and you will charge therefore the fees allowed by law.

All moneys received for copies of records must be deposited by surveyors general to the credit of the Treasurer of the United States, as directed in the circulars above cited, and all moneys so received by receivers of public moneys must be deposited to the credit of the Treasurer of the United States on account of "Fees and Commissions." Such moneys can not be made available for expenditures of any character.

Very respectfully,

Fred Dennett, *Commissioner.*

Approved.

R. A. Ballinger, *Secretary.*

Circular No. 18

RELATIVE TO FURNISHING RAILROAD LISTS FOR TAXATION PURPOSES

Department of the Interior,
General Land Office,
Washington, D. C., May 22, 1911.

Registers and Receivers, United States Land Offices.

Sirs: Complaint has been made to this office that it is the practice of registers and receivers of local land offices to furnish, under the provisions of the act of March 3, 1883 (22 Stat. 484), and the instructions of October 8, 1907 (36 L. D. 194), the proper State or Territorial authorities, for purposes of taxation, lists of lands selected as indemnity by railroad companies, as soon as the selections are filed in their offices, and that the grantee companies are greatly inconvenienced by having lands within their indemnity limits placed upon the tax rolls before they are subject to taxation.

Indemnity railroad lands are not subject to taxation until properly selected by the company and the selection has been approved by the Secretary of the Interior. Wisconsin Central Railroad *v.* Price County (13 U. S. 496). You will, therefore, decline to furnish lists of railroad-indemnity selections, for purposes of taxation, until you shall have received from this office a copy of the clear list which has been approved by the Secretary.

Very respectfully,

FRED DENNETT, *Commissioner.*

CIRCULAR No. 19

FEES FOR CERTIFYING TRANSCRIPTS OF RECORDS AND COPIES OF PLATS MADE BY APPLICANTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 26, 1911.

Registers and Receivers and United States Surveyors General.

GENTLEMEN: As numerous inquiries have been received from officials of subordinate offices as to the fees to be collected under the second paragraph of circular of November 22, 1909, for certified copies of records, you are informed that the same fees must be collected for comparing the copies made by the parties desiring them, and certifying to their correctness, as are collected for copies prepared by your office force and certified by you.

Very respectfully,

FRED DENNETT, *Commissioner.*

[Reported, 41 L. D. 358]

CIRCULAR No. 198

INSPECTION OF SERIAL NUMBER REGISTER

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 29, 1912.

Registers and Receivers, United States Land Offices.

GENTLEMEN: In response to the many inquiries received by and referred to this office relative to the conditions under which the Serial Number Register may be examined by the general public, and the extent of such examination as may be permitted, you are advised that this book is a public record and may be reasonably inspected by any person, provided such examination may be made without interfering with the orderly dispatch of public business. Should you ascertain that any person is obtaining information therefrom for improper purposes, you will deny such person further access to the register and promptly report your action to this office.

The circular of April 16, 1910 (38 L. D. 575), is hereby revoked.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

SAMUEL ADAMS,
First Assistant Secretary.

[Reported, 42 L. D. 162]

DESTRUCTION OF USELESS PAPERS

Department of the Interior,
Washington, May 14, 1913.

The Commissioner of the General Land Office.

Sir: By the act of Congress approved February 16, 1889 (25 Stat. 672), it is made the duty of the head of each executive department of the Government to submit to Congress, from time to time, a schedule of and report concerning such papers as have accumulated in the files of said department, not needed or useful in the dispatch of the current business thereof, possessing no permanent value, and of no historical interest, the purposes of such statute being to provide for and authorize the destruction of all such papers, upon approval of such schedule and report by the joint committee of the House and Senate on the disposition of useless papers in the executive departments.

It appears that no instruction or regulation has been adopted whereby to direct or control the choice and selection of papers intended to be destroyed pursuant to this statute, and it is deemed fitting now to direct that no schedule of useless papers prepared in conformity to the requirements of such statute shall embrace any paper belonging to any of the several classes of papers below enumerated, to wit:

1. Papers pertaining to the files of a case in which the jurisdiction of the department has not been exhausted and terminated by the issuance of a patent or other evidence of title.

2. Papers required by law or departmental regulation or practice to be filed as a part of, or in support of, an application for title under any one of the public land laws.

3. Papers possessing a permanent evidentiary value and materially bearing on and affecting the right of any applicant for patent or other evidence of title to receive the same, or on the relative rights of two or more rival claimants for the same tract of land, including herein the essential portions of the records of all litigated contest proceedings.

Original documents and papers, of special importance to the individual by whom they have been filed as exhibits in the record of a contest, may, in all cases where a certified copy of such document would have been equally competent as evidence, be returned to the person by whom they were so filed, upon his request made for such return and upon his substituting therefor a duly certified copy thereof, prepared either by the local register or recorder in whose office the same may have been once recorded, or by the Commissioner of the General Land Office. No such original exhibit shall be returned, however, until the contest in the record of which it was filed shall have been finally terminated and closed.

4. Ancient and modern documents of historical importance or interest, such as might or ought to be selected for preservation in and as a portion of the permanent national archives.

5. All official reports and other documents pertaining to investigations of and concerning alleged fraudulent or illegal claims to

public lands, or of and concerning alleged misconduct of public officials, including all records pertaining to proceedings for the disbarment of attorneys practicing before the department.

6. All schedules and returns transmitted by registers and receivers, showing entries made and moneys received in their offices.

The foregoing list is not to be construed as indicating that papers not specifically included therein are authorized to be destroyed under the act of February 16, 1889, supra, but as indicating generally the character of papers and documents that should not be reported for destruction under said act.

Respectfully,

Lewis C. Laylin,
Assistant Secretary.

[Reported, 43 L. D. 136]

CERTIFIED COPIES OF RECORDS

Circular No. 301

Department of the Interior,
General Land Office,
Washington, February 26, 1914.

Registers and Receivers, United States Land Offices.

Sirs: The Comptroller of the Treasury, in a decision dated January 19, 1914, holds that the act of August 24, 1912 (37 Stat. 497), was not intended to apply to registers and receivers.

Under the interpretation placed upon said act by the department, circular No. 180 was issued October 17, 1912 (41 L. D. 333), which should henceforth be disregarded by you. The use of the seal furnished you should be discontinued, and the disposition of all moneys received for copies of your records will be governed by the applicable laws without regard to the provisions of said act.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved February 26, 1914.

A. A. Jones,
First Assistant Secretary.

[Reported, 43 L. D. 362]

Circular No. 345

LISTS FOR TAXATION

Department of the Interior,
General Land Office,
Washington, August 5, 1914.

Registers and Receivers, United States Land Offices.

Sirs: In furnishing to State officials, under section 2 of the act of March 3, 1883 (22 Stat. 484), lists of lands sold in your respective districts you will, in listing lands selected by States and corporations under grants from Congress, for railroads and other purposes, charge 10 cents for each 160 acres or fraction thereof, computed as are the fees to be collected under paragraph 152 of Circular No. 105.[d]

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ANDRIEUS A. JONES,
First Assistant Secretary.

CIRCULAR NO. 375

NOTATIONS ON TRACT BOOKS AND PLATS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 22, 1915.

Registers and Receivers, United States Land Offices.

SIRS: It having come to the attention of this office that it has not been the practice of some registers to note all applications and entries of public lands on township plats, your attention is called to section 2295 of the Revised Statutes of the United States, which provides in part that:

> The register of the land office shall note all applications under the provisions of this chapter (5—Homesteads) on the tract books and plats of his office, and keep a register of such entries * * *.

While this section applies to homestead applications only, it is nevertheless necessary that notations shall be made on the tract books and plats of all applications and entries of public lands, regardless of their character, in order that the status of a tract may be readily ascertained by the officer or person examining either tract book or plat, and you are instructed to hereafter cause the proper notations to be made on the plats as well as the tract books.

Applications should be noted on the plats with pencil, and changed to an ink notation if the application is subsequently allowed as an entry or its equivalent. Should the application later be finally rejected and closed, the pencil notation on the plat may be erased. Great care should be exercised in making notations and erasures not to injure the texture or topographic features of the plat.

Plat notations should be made by outlining the tract involved and inserting the serial number of the application within the lines. This will furnish a sufficient reference to the serial register containing a complete record of the case. Appropriate cross references should be made where an application embraces tracts extending into another township. All withdrawals, reservations, classifications, designations under the enlarged homestead act, and similar orders affecting the disposition of the land should be noted on the margin of the plats as well as on the tract books.

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[d] Circular No. 105 has been superseded by Circular No. 616. See par. 121, p. 75 and par. 139, p. 79.

Local officers whose plats have not heretofore been completely noted as indicated herein are directed, as time is available, to systematically check their plats with the tract books, and cause all necessary plat notations to be made.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 44 L. D. 194]

CERTIFIED COPIES OF HOMESTEAD ENTRY PAPERS

Department of the Interior,
General Land Office,
Washington, July 14, 1915.

1. Hereafter no photographic certified copy of homestead entry papers, where the entry was made prior to June 22, 1874, and was for less than 160 acres, will be made, except for Government use. All certified copies of such entry papers, for other than Government use, must be typewritten. Where a blank form is used the blank spaces must be typewritten.

2. From and after this date no tracing of any signature, or imitation thereof, to papers in such homestead entries shall be made by any attorney, agent or other person, for private use. Chiefs of divisions having the custody of this class of homestead entry papers will see that this order is complied with.

Clay Tallman, *Commissioner.*

Approved July 14, 1915.

A. A. Jones,
First Assistant Secretary.

[Reported, 44 L. D. 235]

INSTRUCTIONS RELATIVE TO FURNISHING COPIES AND PERMITTING INSPECTION OF THE RECORDS OF THE INTERIOR DEPARTMENT[1]

Department of the Interior,
Washington, August 4, 1915.

To All Bureaus and Officers of the Interior Department:

The following instructions will govern the matter of furnishing copies of official books, records, etc., of this department, its bureaus, offices, and institutions, and the matter of inspecting such books, records, etc., under the provisions of the act of August 24, 1912 (37 Stat. 497), copy of which is appended hereto:

1. Any person desiring a copy of any such book, record, etc., within the custody of the Secretary of the Interior, the head of any bureau, office, or institution, or officer of this department, which is subject to be furnished under section 1 of said act when not prejudicial to the interests of the Government, must make written application for such copy to such custodian, except in cases coming within the second proviso of said section, stating in such application specifi-

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[1] Modified by Circular No. 777, p. 1280.

cally (1) the particular book, record, etc., copy of which is desired; (2) the kind of copy desired, whether written, photographic, photolithographic, tracing, blue print, or other, and whether authenticated or unauthenticated; and (3) the purpose for which such copy is desired to be used; and shall deposit the approximate amount of the lawful charge for such copy, as provided in said act or other applicable law, rule, or regulation, which deposit will be returned to the applicant should his application be denied. Should the amount deposited be found to be insufficient to pay such lawful charge the desired copy will not be delivered until such deficiency is paid. Any excess deposited over such lawful charge will be returned to the applicant when such copy is delivered.

2. Charges for copies in cases not coming within section 5 of said act, or the laws specified therein, will be as provided in said section 1 for all written or typewritten portions only, where printed stock forms are used, in addition to the authentication charge provided in said act, where authentication is desired.

Charges for copies, and fees for authentication thereof, of records specified in section 5 of said act for which no charge or fee is provided by law will be determined upon application to the head of the office having custody of such records.

3. Under section 2 of said act, providing that inspection of records may be permitted by any person having any particular interest therein, inspection will not be permitted of any record which is deemed to be confidential under the rules of the department, or of any private claim, caveat, or pending application for letters patent, except upon the written authorization of the party filing same, or for other than a proper purpose to be stated by the party applying for inspection of a record, with a specification of the particular record desired to be inspected.

4. The question, under section 1 of said act, whether the furnishing of any desired copy is not prejudicial to the interests of the Government, and the questions under section 2 of said act, relating to inspection of records by persons having some particular interest therein, what is such particular interest as will warrant permission being given to inspect such record, and what is a proper purpose in making inspection thereof, will be determined primarily and promptly by the custodian of a record, etc., to whom application for a copy or for inspection is made, who may, if in doubt, submit the question to his official superior with a statement of any reasons which may exist why such copy should not be furnished or inspection permitted, or may deny the application, in which event the applicant may himself submit his application to such superior official, whose decision shall be final except for gross abuse of discretion shown to the satisfaction of the head of the bureau or department.

What may be prejudicial to the interests of the Government in furnishing copy of any record, etc., or what is such particular interest in a record as may warrant its inspection by any party, or what is a proper purpose in making inspection of any record, are questions upon which no general rule can be formulated, but each case must depend upon its own facts, and any subordinate official applied to for permission to inspect a record within his custody should be satisfied, before giving such permission, that no public or official interest would be prejudiced thereby.

5. These instructions will supersede all others in so far as in conflict or inconsistent therewith, and will be in force from and after this date.

FRANKLIN K. LANE.

[Reported, 48 L. D. 212]

CIRCULAR 777

CIRCULAR OF AUGUST 4, 1915, RELATIVE TO APPLICATIONS FOR COPIES OF RECORDS. MUST STATE PURPOSE FOR WHICH COPY IS DESIRED—MODIFIED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 22, 1921.

Registers and Receivers, United States Surveyors General, Chiefs of Field Divisions, and other Field Officers.

GENTLEMEN: Departmental circular of August 4, 1915, providing, among other things, that applicants for copies of records must state " the purpose for which such copy is desired to be used," has been modified by the Secretary of the Interior under date of September 20, 1921, to the extent of revoking the requirement noted above, so far as the same applies to the field services of the General Land Office.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

[Reported, 49 L. D. 274]

CIRCULAR NO. 504—REVISED

COST OF CERTIFIED COPIES OF RECORDS AND PAPERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 12, 1922.

1. Under existing laws, the following is a schedule of fees for the preparation and delivery of certified copies of records and papers by the General Land Office. Circular No. 504 (45 L. D. 485), is amended to read as follows:

(*a*) For written copies, 15 cents for each 100 words.

(*b*) For photographic copies, 15 cents for each sheet not exceeding 11½ by 15 inches; for larger sizes a proportionate cost, not to exceed 40 cents per sheet.

(*c*) For photolithographic copies of township plats, 50 cents each.

(*d*) For tracings or blue prints, a sum equal to the cost of preparing the same.

(*e*) For certifying a copy and affixing thereto the seal of the officer certifying, 25 cents.

(*f*) For each certified copy of any printed order or regulation intended for gratuitous distribution, 25 cents.

2. The cost of a certified photographic copy of a patent is ordinarily 40 cents and of a typewritten copy 85 cents.

3. A separate certificate and seal must be attached to each certified copy of a patent, as well as to each certified copy of a township plat; but where there have been two or more surveys of a township and a copy of each plat of survey is desired, all of such related plats may be certified under one certificate and seal.

4. All fees for certified copies must be paid in advance. In any case where the amount remitted is insufficient, the remitter will be promptly advised concerning the deficiency.

5. Remittances may be effected by means of New York exchange, certified check, cashier's check, or post-office money order, and should be made payable to the Commissioner of the General Land Office.

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

[Reported, 50 L. D. 299]

Circular No. 915 [2]

NOTATION OF CANCELLATIONS

Department of the Interior,
General Land Office,
Washington, February 5, 1924.

Registers and Receivers, United States Land Offices.

Gentlemen: Inasmuch as valuable rights are often dependent upon ascertaining the exact time when orders of cancellation are noted on the tract book, the following rules are prescribed:

In noting the cancellation of an entry, prospecting permit, lease, selection, etc., the tract book will show the date and initial (division) of the letter of cancellation. The date and hour of the notation on the tract book will be immediately noted on the letter and on the serial register. In reporting the status of cases in connection with which the cancellation of a prior claim is material, you will report the time such cancellation was noted on the tract book.

When relinquishments of entries or withdrawals of applications are filed the hour of filing should be noted on the serial register as well as on the paper filed.

Very respectfully,

William Spry, *Commissioner.*

Approved February 5, 1924.

E. C. Finney,
First Assistant Secretary.

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[2] Amended by Circulars Nos. 929, p. 926; 939, p. 929; 966, p. 931; 979, p. 189; and 1084, p. 939.

RELINQUISHMENTS AND RECONVEYANCES

Circular No. 17

INSTRUCTIONS RE DISPOSITION OF TENDERED RECONVEYANCES OF PATENTED LANDS

Department of the Interior,
General Land Office,
Washington, D. C., May 19, 1911.

Registers and Receivers, United States Land Offices.

Sirs: It has been brought to the attention of this office that in certain instances deeds of reconveyances or relinquishments are submitted to local land officers by persons holding title to lands by patent from the Government. In such cases the local land officers transmit these deeds or relinquishments, after noting them upon the records of their office. Upon examination of the records in this office it is found that in most instances the lands relinquished or reconveyed are the subject of a suit to cancel patent brought upon the recommendation of this office by the Department of Justice.

In order that the practice in such instances may be uniform, it is directed that whenever relinquishments or deeds of reconveyance of patented lands are tendered to you, that you forward them at once to the proper chief of field division, with a statement of the circumstances under which the deeds or relinquishments were received by you. Under no circumstances, should you make notation of the reconveyance or relinquishment of such patented lands, nor allow any change in the status thereof, until advised by this office.

Very respectfully,

Fred Dennett, *Commissioner.*

Circular No. 81

CONDITIONAL RELINQUISHMENTS

Department of the Interior,
General Land Office,
Washington, February 13, 1912.

Registers and Receivers, United States Land Offices.

Sirs: By direction of the Secretary of the Interior you are advised that the practice now prevailing in some local offices of allowing the filing of a conditional relinquishment of an entry or claim subject to the allowance of an accompanying application for the land involved must be discontinued.

Accordingly you will advise all such parties that hereafter (except as noted below), the filing of a relinquishment of an entry or claim will be treated as absolute, the cancellation thereof at once noted of record, and the tract embraced therein will be subject to disposition under existing laws.

The only exceptions to this rule are relinquishments of approved rights of way, conditioned upon the approval of a subsequent application, filed as an amendment to the approved right of way, or as an independent application, but conflicting in whole or in part with the approved right of way. Such relinquishments should not be noted until you are advised of their acceptance by this office.

Many applications for amendment of entries are accompanied by relinquishments of the tracts sought to be excluded. This is unnecessary, and you should advise such applicants that if the relinquishment is filed it is your duty to at once make the same of record.

Respectfully,

Fred Dennett, *Commissioner.*

[Reported, 48 L. D. 629]

Circular No. 820

INSTRUCTIONS—RELINQUISHMENTS WITH REPAYMENT CASES

Department of the Interior,
General Land Office,
Washington, April 12, 1922.

Registers and Receivers, United States Land Offices.

Sirs: In departmental instructions of March 30, 1922, it is directed that a relinquishment filed in support of an application for repayment, pursuant to the provisions of the act of June 16, 1880 (21 Stat. 287), and the regulations thereunder (45 L. D. 520),[a] should be treated as absolute and the entry canceled thereupon and the land involved opened to settlement and entry without further action, in conformity with the rule as enunciated in instructions of January 31, 1912 (40 L. D. 397),[b] regardless of whether or not the repayment claim should be subsequently allowed or denied, thereby overruling the decision in the case of Peter A. C. Hausman (37 L. D. 352), so far as it conflicts with said instructions.

It is to be noted that departmental instructions of March 30, 1922, apply only to cases wherein the entry shall have been relinquished in its entirety. Said instructions in no wise modify paragraph 15 of the repayment regulations of October 25, 1916 (45 L. D. 520, 522), which paragraph relates solely to applications for repayment of moneys paid in connections with commutation entries, final homestead entries, final desert-land entries, and other final certificates where it is the intention of the applicant for repayment to merely suffer cancellation of the final entry, leaving the basic entry intact subject to future compliance with the public land laws.

Very respectfully,

William Spry, *Commissioner.*

Approved April 12, 1922.

E. C. Finney,
First Assistant Secretary.

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[a] See Circular No. 513, p. 1285.

[b] See Circular No. 81, 1283.

REPAYMENTS

[Reported, 45 L. D. 520]

CIRCULAR NO. 513[1]

INSTRUCTIONS GOVERNING REPAYMENTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 25, 1916.

Registers and Receivers, United States Land Offices.

SIRS: The following regulations and instructions governing the repayment of moneys received by the Government and covered into the United States Treasury, in connection with the disposal or attempted disposal of the public lands, are promulgated for your guidance and the information of the general public.

In addition to the provisions of sections 2362 and 2363, United States Revised Statutes, it will be observed from the laws printed in full as an appendix to this circular, that the general laws providing for the return of such moneys are contained in the acts of June 16, 1880 (21 Stat. 287), and March 26, 1908 (35 Stat. 48).

You will strictly observe and enforce the instructions herein contained.

APPLICATIONS

1. The following form of application for repayment is intended to cover every class of claims arising under the provisions of said acts, but the form may be modified by striking out such portions thereof as may be irrelevant to the particular claim presented:

The COMMISSIONER OF THE GENERAL LAND OFFICE:

I hereby make application for the repayment of such amount of money as may be found due, paid in connection with ______________________ No. ______, for the
(Kind of application, etc.)
__________, section ______, township ______, range _________, _________ meridian, as per receiver's receipt No. _______ issued at ________, dated _______, which is surrendered herewith; and on oath declare that I am the same (or legal representative of the) person who made said payment and that there was no fraud or attempted fraud in connection with the effort to obtain title to the land described; that I have not sold, assigned, nor in any manner encumbered the title to the land described; and that the same has not become a matter of record.

____
(Signature of applicant)

____
(Post-office address)

State of________________
County of__________________________________
Subscribed and sworn to before me this ______ day of ______.

____

____
(Official designation)

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[1] See Circular No. 728, p. 1292.

2. The affidavit necessary to an application for repayment may be made before either the register or receiver, or any officer authorized to administer oaths and using a seal.

3. When made before a justice of the peace, a certificate of official character is required.

ACT OF JUNE 16, 1880

FEES, COMMISSIONS, EXCESSES, ETC.

ON FRAUDULENT AND VOID ADDITIONAL SOLDIERS' AND SAILORS' ENTRIES

4. Section 1 of this act authorizes the repayment of the fee, commissions, and excess payments required upon the location or entry of soldiers' and sailors' additional homestead rights, which locations or entries are found to be based upon spurious or forged papers and the entries are canceled as fraudulent and void.

5. Under this section repayment can be made only to the "innocent parties" who paid the moneys, and in order to present a claim thereunder it is necessary that the receipts issued to the claimant be surrendered as a part of the application for repayment.

6. In case the receipts can not be surrendered, an affidavit explaining the loss or destruction of the same is required, together with evidence to show that the moneys applied for were paid by the applicant.

7. The applicant will be required, in all cases where the void location or entry is made in the name of the original entryman, to furnish the power of attorney, or certified copy thereof, authorizing the applicant to make the additional entry; or furnish such other authenticated evidence as may be produced to show that the applicant is in fact the party who made the void additional entry and paid the moneys in connection therewith.

8. A concise statement, in the form of an affidavit, should accompany these applications for repayment, setting forth all the facts and circumstances in connection with the procurement and use of the fraudulent papers upon which the canceled entry was based, together with such other proof as may tend to establish the innocence of the applicant.

ON ENTRIES CANCELED FOR CONFLICT OR WHERE THE SAME HAVE BEEN ERRONEOUSLY ALLOWED AND CAN NOT BE CONFIRMED

9. The first clause of section 2 of this act provides for the repayment of fees, commissions, purchase money, and excesses paid in connection with entries of the public lands that have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry was erroneously allowed and can not be confirmed. This clause directs that said moneys shall be repaid to the person who made such entry, or to his heirs or assigns, and it requires the surrender of the receipts issued and the execution of a proper relinquishment of all claims to the lands acquired under the invalid entry.

10. Claims for repayment should be made on Form 4–109, or the equivalent thereof, which application must contain an affidavit stating that the title to the land under the invalid entry has not been sold or assigned and that the same has not become a matter of record.

11. In cases where the entry has been made a matter of record, in the archives of the county recording officer, there should be added to the form of application (4–109) the words "except as shown by accompanying evidence," in which event the evidence hereinafter required must be furnished.

12.[2] A duly executed relinquishment must be furnished by the applicant in the following or equivalent form:

______ ______, ______, *19*__.

I hereby relinquish to the United States all my right, title, and interest in and to entry No. ______, made at ______________________________, the land being
(Name land office where entry was made)
described as follows: ______ ______, section ______, township ______, range ______, ______ meridian.

____
(Signature)

Witnesses:

____
(Name and address)

____
(Name and address)

Acknowledged before me this ______ day of ______, 19__.

____

____
(Official designation of officer)

13. This relinquishment may be acknowledged before the register or receiver or before any officer authorized to take acknowledgments.

14. If acknowledged before a justice of the peace, a certificate of official character is required.

15.[2] In cases of commutation homestead entry, final homestead entry, final desert-land entry, and other final certificates, which are canceled, leaving the original entry or base intact, subject to future compliance with the requirements of law, a reservation should be incorporated into the relinquishment to the effect: "But excepting from the operation of this relinquishment all my rights and title to the described land under original entry No. ______."

16. The receipts, showing the payments of the moneys claimed, must be surrendered and also the duplicate certificates; but if the same have been lost or destroyed, an affidavit stating the facts must be furnished.

FINAL ENTRIES

17. With applications for repayment of the moneys paid upon canceled commuted homestead entries, final homestead entries, final desert-land entries, mineral entries, coal-land entries, and other final entries, the receiver's receipt and the duplicate certificate of entry, whenever such has issued, should be surrendered.

18. In case the receipt or certificate can not be surrendered or has been lost or destroyed, a certificate will be required from the proper recording officer of the county within which the land is situate, showing that the same has not become a matter of record and that there is no encumbrance of the title to the land thereunder.

19. A recorder's certificate must be furnished, as above, (*a*) in all cases where the application for repayment is made by another than the original entryman, and (*b*) in all cases where the claim is based

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[2] See Circular No. 820, p. 1284.

upon an unrecorded deed from the entryman to the party applying for repayment.

20. In all cases where patent has been issued, upon an invalid entry, a full reconveyance to the United States of all right and title to the land acquired under the patent and entry must be furnished, which deed must be recorded. If a certificate of the recording officer is produced showing that neither the entry nor the patent has been recorded, it is unnecessary to record the reconveyance in case the patent is surrendered.

21. If, however, the patent can not be surrendered, or should the entry or patent have been recorded, it is necessary that the proper party or parties execute a full reconveyance to the United States and have the same recorded as indicated in the next following paragraphs.

22. Where title under an invalid entry or patent has become a matter of record, a duly executed quitclaim deed, relinquishing to the United States all right, title, and claim to the land, acquired under the entry, or patent, must accompany the application for repayment.

23. This deed must be duly recorded, and a certificate must also be produced from the proper recording officer of the county wherein the land is situate, showing that said deed is so recorded and that the records of his office do not exhibit any other conveyance or incumbrance of the title to the land.

24. The reconveyance to the United States must conform in every particular to the laws of the State or Territory in which the land is located relative to transfers of real property; in the case of a married man, in localities where the right of dower, or equivalent, exists, the wife must join in the execution of the deed, and in case of an executor or administrator, due proof of authority to alienate the estate.

25. If the applicant has also acquired the valid title conveyed by the United States, a reconveyance of the land is unnecessary, but a relinquishment, waiving all claim under the illegal entry, is required, together with corroborative evidence of the facts, preferably an abstract of title and a statement in full in support of the claim for repayment.

HEIRS, EXECUTORS, ADMINISTRATORS, AND ASSIGNEES

26. Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained and must show that the parties applying are the heirs and the only heirs of the deceased.

27. Proof of heirship should be made in the form of an affidavit, corroborated by two witnesses, setting forth the date of the death of the intestate; whether the intestate left surviving a husband or wife, as the case may be; the full name and age of such husband or wife; the names and ages of all children; and also state whether there is any issue of a deceased child or children. The affidavit should set forth all the facts, in order that this office may determine who are the legal heirs, in accordance with the laws of descent and distribution of the State where the land is situated.

28. In case there are minor heirs not under the guardianship of a duly appointed guardian, and the amount to be repaid is $200 or less, the surviving parent may execute the application as the natural guardian of such heirs. Such application should be supplemented with an affidavit stating all the facts in detail.

29. Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

30. Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

31. Where applications are made by assignees, the applicants must show their right to repayment by furnishing properly authenticated abstracts of title, or the original deeds or instruments of assignment, or certified copies thereof.

32. In the place of an abstract of title the applicant may furnish a certificate of the recording officer of the county in which the land is situate, showing all alienations or liens affecting title to the land in connection with the entry upon which the claim for repayment is based.

33. The applicants must also show by affidavits or otherwise that they have not been indemnified by their grantors or assignors for the failure of title, and that title has not been perfected in them by their grantors through other sources.

34. Where there has been a conveyance of the land and the original purchaser applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee.

35. Those persons are assignees, within the meaning of the statutes authorizing the repayment of purchase money, who purchase the land after the entries thereof are completed and take assignments of the title under such entries prior to complete cancellation thereof, when the entries fail of confirmation for reasons contemplated by the law.

36. To construe said statutes so as to recognize the assignment or transfer of the mere claim against the United States for repayment of purchase money, or fees and commissions, disconnected from a sale of the land or attempted transfer of title thereto, would be against the settled policy of the Government and repugnant to section 3477 of the Revised Statutes. (2 Lawrence, First Comp. Dec. 264, 266, and 6 Dec. Comp. of the Treasury, 334, 359.)

37. Assignees of land who purchase after entry are, in general, deemed entitled to receive the repayment when the lands are found to have been erroneously sold by the Government. But this rule does not apply to the repayment of double-minimum excesses. (First Comp. Dec. in case of Adrian B. Owens, Copp's Pub. Land Laws, 1890, vol. 2, p. 1238.)

38. Mortgagees are not assignees within the meaning of the repayment laws, but may become such by pursuing the course suited to the particular case as follows:

(*a*) Where, after date of entry and prior to cancellation thereof, the land is mortgaged and the mortgagee receives a sheriff's deed under foreclosure proceedings, the mortgagee becomes an assignee. (See 193 U. S. 651; 28 L. D. 201, and 30 L. D. 136.)

(*b*) Where a mortgage is executed prior to the cancellation of an entry, and a deed made to the mortgagee after such cancellation, the holder of such deed becomes the assignee. (See 26 L. D. 425.)

39. In either case, complete evidence must be furnished to establish the applicant's right to repayment by producing the original deeds or instruments, or certified copies thereof showing all transactions, together with certified copies of the court proceedings.

DOUBLE-MINIMUM EXCESS

40. The last clause of the second section of the act provides that "in all cases where parties have paid double-minimum price for land which has afterwards been found not to be within the limits of a railroad land grant, the excess of $1.25 per acre shall in like manner be repaid to the purchaser thereof or to the heirs or assigns."

41. This clause has been practically absorbed by section 2 of the act of March 26, 1908. (Instructions following.)

42. The applicant must make the affidavit showing that he is the identical party who made the entry on which repayment is claimed, as contained in the form of application.

43. Repayment of double-minimum excess will be made only to the original entryman, his heirs or assigns. The sale and transfer of the land is not of itself treated as an assignment of the right to receive repayment of double-minimum excess.

ACT OF MARCH 26, 1908 [a]

44. The act of March 26, 1908 (35 Stat. 48), provides for the repayment of certain commissions, excess payments, and purchase moneys paid under the public land laws and is additional to the provisions of sections 2362 and 2363, United States Revised Statutes, and to the act of June 16, 1880 (supra).

45. The first section of this act authorizes the return to the applicant, or his legal representatives, of purchase moneys and commissions covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, where such application has been or shall hereafter be rejected, in cases where neither the applicant nor his or her legal representatives shall have been guilty of any fraud or attempted fraud in connection with said application.

46. This section refers more particularly to moneys covered into the Treasury of the United States which were paid in connection with rejected applications to make entry, proof, etc., but it also contemplates the repayment of moneys paid in connection with allowed entries and proofs, which entries or proofs should have been rejected. (See 43 L. D. 104.)

47. The second section authorizes the return to the person who made the payment, or to his legal representatives, of any moneys paid under any of the land laws of the United States, in excess of the legal requirements.

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[a] See Circular No. 728, p. 1292.

LEGAL RERESENTATIVES

48. The term " legal representatives " includes heirs, executors, and administrators, and where application is made by either of them due proof must be furnished as required by paragraphs Nos. 29 or 30, as the case may be.

49. Assignees also come within the purview of this term, but only in such instances as would not be repugnant to section 3477, United States Revised Statutes.

50. Where applications are made by assignees, the evidence required under paragraphs Nos. 31 or 32, as the case may be, must be furnished.

51. Section 3477, United States Revised Statutes, prohibits the transfer or assignment of claims against the United States, and therefore any attempted transfer or assignment of a claim under either of the before-mentioned sections can not be recognized, except in certain cases, coming under section 1 of this act. (See 42 L. D. 181.)

52. The instances in which assignees are authorized to receive repayment under this act would be in cases where entries are allowed, but which should have been rejected, and after the date of such entries and prior to the cancellation thereof, valid attempts are made to transfer the lands entered; and further, in cases where proofs and payments are made, but certificates of entry withheld, and thereafter valid assignments are made of all right, title, and interest in and to the lands involved. (43 L. D. 477, and 44 L. D. 516.)

DEFINITION OF " ERRONEOUSLY ALLOWED "

53. This phrase, being the basis for the allowance of repayment under section 2 of the act of June 16, 1880 (supra), can not be given an interpretation of such latitude as would countenance fraud. If the records of the Land Office, or the proofs furnished, should show that the entry ought not to be permitted, and yet it were permitted, then it would be " erroneously allowed." But if a tract of land were subject to entry, and the proofs showed a compliance with law, and the entry should be canceled because the proofs were shown to be false, it could not be held that the entry was " erroneously allowed "; and in such case repayment would not be authorized.

FRAUD OR ATTEMPTED FRAUD

54. What constitutes " fraud or attempted fraud " within the meaning of section 1 of the act of March 26, 1908 (supra), such as will bar repayment, affords a wide degree of latitude, and it necessarily follows that each claim for repayment must be adjudicated upon a finding of the record in the case.

TRANSMITTAL OF APPLICATIONS

55. Applications for repayment may be filed either in this office or in the proper district land office.

56. When an application is filed in the district land office the register and receiver shall transmit the same with a full report of the

facts in the case, as shown by their official records, and recommend either the allowance or the disallowance of the claim.

57. Where an application is filed, either in the district land office or in this office, it should be accompanied by a statement by the applicant setting forth fully the grounds upon which repayment is claimed.

CREDIT FOR PRIOR PAYMENT UPON SECOND PROOF

58. In cases where the commutation homestead proof, final homestead proof, final desert-land proof, or other proof based upon an original entry, upon which you have issued certificate, has been rejected by this office, the certificate canceled, and the original entry allowed to stand subject to future compliance with the law, if second proof is accepted, credit may be allowed for the money paid on the first proof, and the register will issue his certificate, bearing proper number and date, making notation thereon in accordance with paragraph 195, Circular No. 105, dated May 4, 1912.[b]

59. The entryman is required to pay the testimony fees in connection with the second proof, irrespective of the fees paid with the first proof, which fees are to be accounted for in accordance with instructions contained in said Circular No. 105.

60. If the entire entry is canceled and the entryman is allowed to begin proceedings de novo, as for instance, in a mineral entry, the purchase money paid upon the first entry can not be applied in payment for a second entry. The only relief that may be afforded, if any, will be upon application for repayment.

Very respectfully,

Clay Tallman, *Commissioner.*

Approved.

Bo Sweeny, *Acting Secretary.*

(Laws omitted.)

[Reported, 47 L. D. 594]

Circular No. 728

ACT OF DECEMBER 11, 1919 (41 STAT. 366), LIMITING TIME FOR FILING APPLICATION FOR REPAYMENT—ACT OF MARCH 26, 1908 (35 STAT. 48)

Department of the Interior,
General Land Office,
Washington, November 13, 1920.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to the act of Congress, December 11, 1919, limiting the time of filing repayment claims under the act of March 26, 1908 (35 Stat. 48), to two years. The act of 1908, as amended, reads as follows:

> Section 1. That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representa-

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[b] Circular No. 105 has been superseded by Circular No. 616. See par. 70, p. 64.

tives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application: *Provided*, That such person or his legal representatives shall file a request for the repayment of such purchase moneys and commissions within two years from the rejection of such application, entry, or proof, or within two years from the passage of this act as to such applications, proofs, or entries, as have been heretofore rejected.

Sec. 2. That in all cases where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payments to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws, such excess shall be repaid to such person or to his legal representatives: *Provided*, That such person, or his legal representatives shall file a request for the repayment of such excess within two years after the patent has issued for the land embraced in such payment, or within two years from the passage of this act as to such excess payments as have heretofore been made.

Sec. 3. That when the Commissioner of the General Land Office shall ascertain the amount of any excess moneys, purchase moneys, or commissions in any case where repayment is authorized by this statute, the Secretary of the Interior shall at once certify such amounts to the Secretary of the Treasury, who is hereby authorized and directed to make repayment of all amounts so certified out of any moneys not otherwise appropriated and issue his warrant in settlement thereof.

Sec. 4. That the Secretary of the Interior is hereby authorized to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this act into full force and effect.

Claims for repayment under the provisions of this act, which originated prior to its passage must be filed on or before December 11, 1921. After that date the time of filing claims for repayment will be limited to two years from rejection of the application, entry, or proof; and in case of payments in excess of lawful requirement, claims for repayment must be filed within two years from issuance of patent.

This circular should be posted in a conspicuous place in your office and should be given to the press as a news item.

Very respectfully,

Clay Tallman, *Commissioner*.

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[illegible]

tion with the second proof, irrespective of the fees [illegible]

80. If the entire entry is canceled and the entryman is allowed to [illegible]

[illegible]

Approved.

(Laws omitted.)

[illegible], *Commissioner.*

[Reprinted 47 L. D. 394]

CIRCULAR No. [illegible]

ACT OF DECEMBER 11, 1919 (41 STAT. 366), LIMITING TIME FOR FILING APPLICATION FOR REPAYMENT—ACT OF MARCH 26, 1908 (35 STAT. 48)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 13, 1920.

Registers and Receivers, United States Land Offices.

SIRS: Your attention is directed to the act of Congress, December 11, 1919, limiting the time of filing repayment claims under the act of March 26, 1908 (35 Stat. 48), to two years. The act of 1908, as amended, reads as follows:

> SECTION 1. That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representa-

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[1] Circular No. [illegible] has been superseded by Circular No. [illegible]. See par. 70, p. 64.

RESERVOIRS, SPRINGS, AND WATER HOLES

[Reported, 49 L. D. 577]

CIRCULAR No. 893 [1]

FENCING OF STOCK-WATERING RESERVOIRS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 3, 1923.

Registers and Receivers, United States Land Offices.

GENTLEMEN: The act of Congress approved March 3, 1923 (42 Stat. 1437), amends section 1 of the act of January 13, 1897 (29 Stat. 484), "An act providing for the location and purchase of public lands for reservoir sites" by inserting at the end thereof, the following new sentence:

> The Secretary of the Interior, in his discretion, under such rules, regulations, and conditions as he may prescribe, upon application by such person, company, or corporation, may grant permission to fence such reservoirs in order to protect livestock, to conserve water, and to preserve its quality and conditions: *Provided,* That such reservoir shall be open to the free use of any person desiring to water animals of any kind; but any fence erected under the authority hereof shall be immediately removed on the order of the Secretary.

This act applies only to stock-watering reservoirs which have been or may hereafter be constructed, and due proof of construction filed in the General Land Office.

Any person, company, or corporation desiring to secure the benefits of this act should file in the local land office an application, under oath, duly corroborated by at least two disinterested witnesses, setting forth such facts as would show that it is necessary to fence such reservoir in order to protect the livestock, to conserve water, and to preserve its quality and condition. There should be filed with such application, and as a part thereof, a plat showing the land embraced in the reservoir as near as may be, the location of the proposed fence with respect to such reservoir, together with all gates or other openings and roadways leading to the same. In no instance will an application be considered unless said plat shows the location of at least two gates. Said gates shall be so constructed and maintained that they may be, at all times, readily opened and closed by any person desiring to water animals of any kind and such gates shall be so placed as to be readily accessible from the road or roads nearest the reservoir, which roads shall be the ones usually traveled and, where there are no such roads whereby to govern the location of such gates, they shall be so situated as to make the reservoir readily available from the adjacent public or other range; and that there shall be posted on the gates, and elsewhere if necessary, a notice stating that the reservoir is for stock-watering purposes, located on public lands, and that the same is open to the free use of any person desiring to water animals of any kind.

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[1] See circular of June 6, 1908, p. 1314 et seq.

Upon the filing of such an application, it should be considered by the local office as an additional paper in the case and transmitted to this office by special letter under the serial number of the reservoir declaratory statement for such action as may be deemed proper.

Very respectfully,

William Spry, *Commissioner.*

Approved May 3, 1923.

E. C. Finney, *First Assistant Secretary.*

[Reported, 51 L. D. 186]

Circular No. 1028 [2]

REGULATIONS RELATIVE TO THE USE OF LANDS WITHDRAWN AS PUBLIC WATER RESERVES

Department of the Interior,
General Land Office,
Washington, August 27, 1925.

1. Permission may be obtained to use or improve lands withdrawn as or in connection with public water reserves, under the act of June 25, 1910 (36 Stat. 847), or any other act, by filing application for such permission under the act of February 15, 1901 (31 Stat. 790), in accordance with the regulations governing said act, as found in 36 L. D. page 367, as supplemented by these regulations.

2. As a condition precedent to the granting of any such permission, the applicant will be required to execute such stipulations and agreements as may be deemed proper and necessary by the Secretary of the Interior, to safeguard the public interests, after investigation of the facts, circumstances, and conditions in connection with each individual case.

3. Any citizen or association of citizens of the United States, or any corporation, duly created and existing under and by virtue of the laws of any State of the United States, who may desire to improve the productivity of any water hole or source of water supply within the boundaries of any public water reserve, or to conduct such waters from their source within such a reserve to a point or place more convenient for public use, may file in the office of the register of the United States land district, within which the reservation is situated, an application for permission so as to use the reserved land, or conduct the waters over or through the same.

Such application should be in the form of an affidavit, duly corroborated, by at least two persons, setting forth in detail the plan of the applicant for the improvement and care of the public water reserve, the public necessity for such improvement, the reasons why such plan will be more conducive to the public good and better conserve the waters for public use, and any other facts and circumstances pertinent thereto.

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[2] See circular of June 6, 1908, p. 1314 et seq. Also see Circular No. 1122, p. 1544.

4. If the waters are to be conducted from their source within the reserve to a point outside of the reserve, the application should be accompanied by a map and separate field notes in duplicate, the map being delineated upon tracing linen, and prepared in accordance with the regulations of June 6, 1908, governing the submission of applications under the act of February 15, 1901, supra, also evidence that applicant has applied to the proper State official for permission to appropriate the waters to the uses contemplated, and has prosecuted such application in good faith to date of the filing of the application.

5. Upon receipt of such an application in the General Land Office, the commissioner will direct the division inspector to make careful field investigation as to the facts and circumstances set forth in the affidavit of applicant, as to the public necessity or desirability of the system proposed, and as to all other facts and circumstances germane to the granting of such a permit, together with recommendation as to any stipulations or agreements which to him may seem necessary or proper for the protection of the public interest, and the most economical conservation and use of such waters.

Upon receipt of said report the Commissioner of the General Land Office will transmit a copy of the same, together with the application to the Director of the Geological Survey, for report and suggestion relative to the feasibility of the plan and the terms and conditions upon which the permit should be issued, if at all.

7. If the place of use of the water is upon unreserved public land the applicant may be called upon to file a reservoir declaratory statement under the act of January 13, 1897 (29 Stat. 484), as well as the application under the act of February 15, 1901, supra, if deemed advisable.

8. Each permit shall contain, besides those found necessary in individual cases, the following conditions:

(*a*) That the right to appropriate the waters of the State to the uses contemplated shall be obtained within one year from and after the issuance of the permit and the permittee shall file a certificate to that effect issued by the proper State authority.

(*b*) That the proposed system shall be fully completed in substantial conformity with the plan upon which the permit is predicated, within two years from and after the issuance of such permit, unless a different period is specifically provided for in such permit.

(*c*) That the permittee shall, during the month of January, in each year after the completion of such system, file with the register of the land district within which the system is located, for transmission to the General Land Office, an affidavit of maintenance, in substantially the following form:

STATE OF ______
County of ______, *ss:*

______________________________, being duly sworn says that he is the President of the ______________________________ company (or person) to whom permit, (give land district and serial number), was issued by the Secretary of the Interior, (give date), in connection with public water reserve No. __. That the system as set forth and described in said permit has been kept in repair and water sufficient for the public needs has been kept therein during the whole of the calendar year of 19__, that the same has been kept open to the public at all times during the year, and that the said permittee has in all things, complied with the provisions of said permit, and the stipulations therein contained and the acts under which said permit was issued.

____
(Signature)

Subscribed and sworn to before me this — day of ——— 19—.

____
Notary Public.

In the event that the State certificate as to the right to appropriate the water is not filed within one year, or proof of the construction of the system, consisting of the affidavit of the permittee duly corroborated by two witnesses within two years or such other period as may be mentioned in the permit, or affidavit of maintenance is not filed as hereinbefore provided or in case any of the terms, conditions, provisions, or stipulations of the permit shall not be well and in good faith performed, observed, and carried out, then such permit shall become and be subject to cancellation. Nothing hereinbefore contained, however, is to be construed as limiting the power or authority of the Secretary of the Interior to cancel and determine the permit at any time when in his judgment such action is desirable.

Permits issued hereunder are transferable only upon the written authority and consent of the Secretary of the Interior.

11. If, at any time, it becomes necessary for the permittee to change his system or to erect structures other than those authorized by his permit, application for permission so to do, in the form of an affidavit setting forth in detail the reason and necessity for the change must be filed, and no such change shall be made until authorized in writing by the Secretary of the Interior.

Thos. C. Havell,
Acting Commissioner.

Approved August 27, 1925.

John H. Edwards,
Assistant Secretary.

[Reported, 51 L. D. 457]

Circular No. 1066 [3]

AMENDING ALL CIRCULARS AND REGULATIONS PERTAINING TO SELECTIONS, FILINGS, OR ENTRIES OF LANDS CONTAINING SPRINGS OR WATER HOLES

Department of the Interior,
General Land Office,
Washington, May 25, 1926.

Registers, United States Land Offices.

Sirs: By Executive order of April 17, 1926, the following order of withdrawal was issued:

> Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended

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[3] Modified by Circular No. 1095, p. 1300; circular of Feb. 8, 1929, p. 1300; and Executive order of May 4, 1929, p. 1301.

by act of Congress approved August 24, 1912 (37 Stat. 497), it is hereby ordered that every smallest legal subdivision of the public-land surveys which is vacant unappropriated unreserved public land and contains a spring or water hole, and all land within one-quarter of a mile of every spring or water hole located on unsurveyed public land be, and the same is hereby, withdrawn from settlement, location, sale, or entry, and reserved for public use in accordance with the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), and in aid of pending legislation.

The above order was designed to preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes. It is not therefore to be construed as applying to or reserving from homestead or other entry lands having small springs or water holes affording only enough water for the use of one family and its domestic animals. It withdraws those springs and water holes capable of providing enough water for general use for watering purposes.

In furtherance of said order, all General Land Office circulars and regulations pertaining to the selection, filing, or entry of public lands under any of the public land laws of the United States, are hereby amended so that in every instance it must be shown by a duly corroborated affidavit in connection with every selection, filing, or entry made upon or subsequent to the date of said Executive order, or theretofore filed but not allowed, that no spring or water hole exists, if it be a fact, upon any legal subdivision of the land sought to be appropriated, if surveyed, and if unsurveyed, within one-quarter of a mile from the exterior boundaries of said land. If there be any spring or water hole the affidavit should state the exact location and size thereof; together with an estimate of the quantity of water in gallons which it is capable of producing daily, and any other information necessary to determine whether or not it is valuable or necessary as a public water reserve.

In case the attempted appropriation of the land is one the allowance of which is within the discretion of the Secretary of the Interior or the Commissioner of the General Land Office, the showing hereinbefore referred to must be furnished, irrespective of the date of filing of the application, entry, or selection, before favorable action is taken thereon.

This circular shall not apply, however, to selections or filings made in pursuance of grants which have been determined to be "Grants in praesenti," and to have attached and become effective prior to April 17, 1926, or to valid settlement claims initiated prior to said date and thereafter maintained in accordance with the law applicable thereto.

You will make proper notations on your records of this withdrawal in order that it may be considered in connection with any applications filed.

Very respectfully,

William Spry, *Commissioner.*

Approved May 25, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 597]

CIRCULAR NO. 1095

WORKING RULE IN CONNECTION WITH CIRCULAR NO. 1066

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 22, 1926.

Geological Survey designation lists, both enlarged and stock raising, now contain a paragraph that:

> This area contains no springs or water holes of the type intended to be withdrawn by Executive order of April 17, 1926, creating public water reserve No. 107, and, therefore, is unaffected by it.

Where orders of designation under the enlarged or stock-raising acts contain the above-quoted paragraph, it will not be necessary for an entryman to make the showing required by Circular No. 1066

THOS. C. HAVELL,
Acting Commissioner.

Approved September 22, 1926.

E. C. FINNEY,
First Assistant Secretary.

AFFIDAVITS AS TO SPRINGS OR WATER-HOLES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 7, 1929.

The SECRETARY OF THE INTERIOR.

SIR: By decision of January 30, 1929, in forest lieu selection case Gainesville 020662 the department directed that the selector be not required to furnish corroboration of the affidavit as to springs and water holes, because of the conditions existing in the State of Florida where the selected lands lie.

This brings up the question of the necessity of any affidavit as to springs and water holes in said State or in the States of Alabama, Mississippi, Louisiana, Arkansas, Michigan, Wisconsin, and Minnesota where like conditions exist.

As stated in Circular No. 1066, 51 L. D. 457, the object of the Executive order of April 17, 1926, was to—

> preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes.

In none of the States named, so far as I am aware, are the springs or water holes, if any, on the public lands "needed or used by the public for watering purposes." The conditions in those States are entirely different from those in the other public-land States where grazing is carried on to a considerable extent and not only springs and water holes but other available sources of water supply are sometimes quite scarce. It appears, therefore, to me that there are no lands in the States mentioned that come within the purview of the

Executive order of April 17, 1926, and a nonwater hole and nonspring affidavit is not required. If you agree with this view and by the approval of this letter adjudge the lands in such States as not containing springs and water holes needed for public watering places, this office will in the future eliminate said States from the requirement of Circular No. 1066.

Very respectfully,

William Spry, *Commissioner.*

Approved February 8, 1929.

E. C. Finney,
First Assistant Secretary.

EXECUTIVE ORDER—PUBLIC WATER RESERVE NO. 107

Executive order of April 17, 1926, creating public water reserve No. 107, is hereby modified so as to exclude the Territory of Alaska from the operation thereof.

Herbert Hoover.

The White House,
May 4, 1929.

[No. 5106]

Department of the Interior,
General Land Office,
Washington, September [illegible], 1926.

Geological Survey designation lists, both enlarged and stock-raising, now contain a paragraph that:

This area contains no springs or water holes of the type intended to be withdrawn by Executive order of April 17, 1926, creating public water reserve No. 107, and therefore is unaffected by it.

Where orders of designation under the enlarged or stock-raising acts contain the above quoted paragraph, it will not be necessary for [illegible]

[illegible]
Acting Commissioner.

Approved September 28, 1926.

[illegible] Finney,
First Assistant Secretary.

AFFIDAVITS AS TO SPRINGS OR WATER-HOLES

Department of the Interior,
General Land Office,
Washington, February 7, 1929.

The Secretary of the Interior.

Sir: By decision of January 30, 1929, in forest lieu selection case Gainesville 029862 the department directed that the selector be not required to furnish corroboration of the affidavit as to springs and water holes, because of the conditions existing in the State of Florida where the selected lands lie.

This brings up the question of the necessity of any affidavit as to springs and water holes in said State or in the States of Alabama, Mississippi, Louisiana, Arkansas, Michigan, Wisconsin, and Minnesota where like conditions exist.

As stated in Circular No. 1066, 51 L. D. 457, the object of the Executive order of April 17, 1926, was to—

> preserve for general public use and benefit unreserved public lands containing water holes or other bodies of water needed or used by the public for watering purposes.

In none of the States named, so far as I am aware, are the springs or water holes, if any, on the public lands "needed or used by the public for watering purposes." The conditions in those States are entirely different from those in the other public-land States where grazing is carried on to a considerable extent and not only springs and water holes but other available sources of water supply are sometimes quite scarce. It appears, therefore, to me that there are no lands in the States mentioned that come within the purview of the

RIGHTS OF WAY

[Reported, 23 L. D. 458]

RIGHT OF WAY—RAILROAD—CANAL—RESERVATION

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 27, 1896.

Registers and Receivers,
United States Land Offices.

SIRS: The honorable Secretary having held, in the case of Dunlap *v.* Shingle Springs and Placerville R. R. (23 L. D. 67) that "A railroad right of way under the act of March 3, 1875, is fully protected by the terms of the act as against subsequent adverse rights, and a reservation of such right of way, in final certificates and patents issued for lands traversed thereby, is therefore not necessary and should not be inserted" (syllabus), and having on October 16, 1896, denied a motion for review of said decision, you will be governed thereby.

The language of the canal and reservoir right of way act of March 3, 1891 (26 Stat. 1095), in reference to this matter, being the same as of the act of 1875, the ruling applies to it as well.

The effect of this decision is to revoke that part of the instructions at the bottom of page 6, circular of March 21, 1892, for railroads, and in paragraph 26, circular of February 20, 1894, for canals and reservoirs, relating to the notation to be made in red ink across the face of the certificate issued upon any entry apparently subject thereto, that the same is allowed, subject to the right of way of the road, or the canal or reservoir.[1] The notations on township plats and tract books should be made as heretofore.

It will be observed that the decisions above noted do not refer to cases where right of way has been granted under special acts. In the current annual report of this office will be found a list of approved rights of way in which are designated the cases where the grant has been made under special acts. See pages 266 and 267, Report of 1895.

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

Approved.

DAVID R. FRANCIS, *Secretary.*

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[1] The circular of Mar. 21, 1892, is reported in 14 L. D., p. 338; the circular of Feb. 20, 1894, in 18 L. D., p. 168. The reference to page 6 of the former circular is to that circular as issued in pamphlet form. For later instructions, see circular of May 21, 1909, p. 1324, and circular of June 6, 1908, p. 1304.

[Reported, 36 L. D. 567]

REGULATIONS FOR RIGHTS OF WAY OVER PUBLIC LANDS AND RESERVATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
June 6, 1908.[2]

CANALS, DITCHES, AND RESERVOIRS

1. *General statement.*—Sections 18, 19, 20, and 21 of the act of Congress approved March 3, 1891 (26 Stat. 1095), entitled "An act to repeal timber-culture laws, and for other purposes," grant the right of way through the public lands and reservations of the United States for the use of canals, ditches, or reservoirs heretofore or hereafter constructed by corporations, individuals, or associations of individuals. If the right of way is upon a reservation not within the jurisdiction of the Interior Department, the application must be filed in accordance with these regulations, and will be submitted to the department having jurisdiction. A map and field notes of the portion within any reservation, except in the case of a national forest, must be submitted in addition to the duplicates required herein. All maps and field notes must conform to the provisions of this circular. The sections above noted read as follows:

SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation, and duly organized under the laws of any State or Territory, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its article of incorporation and due proofs of its organization under the same to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal if the same be upon surveyed lands, and if upon unsurveyed lands within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation in the construction of any canal, ditch, or reservoir injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior and with the register of the land office where said land is located a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal or ditch shall not be completed within five years after the location of said section the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

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[2] Amended by Circulars Nos. 108, p. 1335; 194, p. 1335; 416, p. 1360; 479, p. 1360; 638, p. 1361; 1003, p. 1362; and 1076, p. 1363.

SEC. 21. That nothing in this act shall authorize such canals or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

2.[3] *Material on adjacent lands.*—The word adjacent, as used in section 18 of the act, in connection with the right to take material for construction from the public lands, must be construed according to the conditions of each case (28 L. D. 439). The right extends only to construction, and no public timber or material may be taken or used for repair or improvements (14 L. D. 566). These decisions were rendered under the railroad right-of-way act, and are applied to this act since the words are the same in both.

Section 2 of the act approved May 11, 1898 (30 Stat. 404), entitled "An act to amend an act to permit the use of the right of way through public lands for tramroads, canals, and reservoirs, and for other purposes," authorizes the use of rights of way granted under the act of 1891 for purposes subsidiary to the main purpose of irrigation. The language of said section is as follows:

SEC. 2. That rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections eighteen, nineteen, twenty, and twenty-one of the act entitled "An act to repeal timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation.

3. *Control of water.*—While these acts grant rights of way over the public lands necessary to the maintenance and use of ditches, canals, and reservoirs, the control of the flow and use of the water is, so far as this act is concerned, vested in the States or Territories, the jurisdiction of the Department of the Interior being limited to the approval of maps carrying the right of way over the public lands. If the right of way applied for under this act in any wise involves the appropriation of natural sources of water supply, the damming of rivers, or the use of lakes, the maps should be accompanied by proof that the plans and purposes of the projectors have been regularly submitted and approved in accordance with the local laws or customs governing the use of water in the State or Territory in which such right of way is located. No general rule can be adopted in regard to this matter. Each case must rest upon the showing filed.

4. *Nature of grant.*—The right granted is not in the nature of a grant of lands, but is a base or qualified fee. The possession and right of use of the lands are given for the purposes contemplated by law, but a reversionary interest remains in the United States, to be

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[3] See addendum, p. 1363.

conveyed by it to the person to whom the land may be patented, whose rights will be subject to those of the grantee of the right of way. All persons settling on a tract of public land, to part of which right of way has attached for a canal, ditch, or reservoir, take the land subject to such right of way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right of way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of this department. Section 21 of the act of March 3, 1891, provides that the grant of a right of way for a canal, ditch, or reservoir does not necessarily carry with it a right to use of land 50 feet on each side, but only such land may be used as is necessary for construction, maintenance, and care of the canal, ditch, or reservoir. The width is not specified.

5. *Right of way through national forests.*—Whenever a right of way is through a national forest, the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest. No construction will be allowed in a national forest until an application for right of way has been regularly filed and approved by the Secretary of the Interior, or unless permission for such construction work has been specifically given.

6. *Right of way through proposed national forest.*—If the right of way is through land within a proposed national forest, the applicant must file the following stipulations under seal:

(*a*) That the proposed right of way is not so located as to interfere with the proper occupation and use of the reservation by the Government.

(*b*) That the applicant will cut no timber from the reserve outside the right of way, and will remove no timber from the land within the right of way except such as is rendered necessary for the proper use and enjoyment of the privilege for which application is made.

(*c*) That he will remove from the reservation, or destroy, under such safeguards as may be deemed necessary by the General Land Office, all standing, fallen, and dead timber, as well as all tops, lops, brush, and refuse cuttings on the right of way, for such distance on each side of the central line as may be required by the General Land Office to protect the forest from fire.

(*d*) That the applicant will furnish free of charge such assistance in men and material for fighting fires as may be spared without serious injury to the applicant's business.

(*e*) That should any portion of said right of way be included in a national forest, the applicant will build new roads, trails, and crossings, as required by the Forest Service, in case any roads or trails are destroyed or intercepted by construction work or flooding upon said right of way.

The applicant will also be required to give bond to be approved by the Commissioner of the General Land Office, stipulating that the United States will be compensated " for any and all damage to the public lands, timber, natural curiosities, or other public property on such reservation, or upon the lands of the United States, by reason of such use and occupation of the reserve, regardless of the cause or circumstances under which such damage may occur." A bond furnished by any surety company that has complied with the provisions of the act of August 13, 1894 (28 Stat. 279), will be accepted. The amount of the bond can not be fixed until the application has been submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.

7. *Right of way partly on unsurveyed land.*—Canals, ditches, or reservoirs lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to these regulations, but the approval will only relate to that portion traversing the surveyed lands. (For right of way wholly on unsurveyed land, see sec. 17.)

8. *Application by corporation.*—An incorporated company desiring to obtain the benefits of the law must file the papers and maps specified below with the register of the land district in which the canal, ditch, or reservoir is to be located. These papers and maps will be forwarded to the General Land Office and, after examination, they will be submitted to the Secretary of the Interior with recommendation as to their approval:

(*a*)[4] A copy of its articles of incorporation, duty certified to by the proper officers of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(*b*) A copy of the State or Territorial law under which the company was organized, (if it was organized under State or Territorial law), with certificate of the governor or secretary of the State or Territory, under seal, that the same was the law at the date of incorporation. (See par. (*k*) of this section.)

(*c*) If the State or Territorial law directs that the articles of incorporation or other papers connected with the organization be filed with any State or Territorial officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(*d*) When a company is operating in a State or Territory other than that in which it is incorporated, it must submit the certificate of the proper officer of the State or Territory that it has complied with the laws of that State or Territory governing foreign corporations to the extent required to entitle the company to operate in such State or Territory.

No forms are prescribed for the above portion of the "due proofs" required, as each case must be governed to some extent by the laws of the State or Territory.

(*e*) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with construction according to the existing law of the State or Territory in which it is incorporated, and that the copy of the articles filed is true and correct. (See Form 1.)

(*f*)[4] A true list, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (See Form 2.)

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[4] See amendment, p. 1335.

(*g*) A copy of the company's title or right to appropriate the water needed for its canals, ditches, and reservoirs, certified as required by the State or Territorial laws. If the miner's inch is the unit used in such title, its equivalent in cubic feet per second must be stated. If the right to appropriate the water has not been adjudicated under the local laws, a certified copy of the notice of appropriation will be sufficient. If the notice of appropriation is accompanied by a map of the canal or reservoir it will not be necessary to furnish a copy of the map where the notice describes the location sufficiently to identify it with the canal or reservoir for which the right-of-way application is made. If the water-right claim has been transferred a number of times it is not necessary to furnish a copy of each instrument of transfer; an abstract of title will be accepted.

(*h*) A copy of the State or Territorial laws governing water rights and irrigation, with the certificate of the governor or secretary of the State or Territory that the same is the existing law. (See par. *k* of this section.)

(*i*) A separate statement as follows: The amount of water flowing in the stream supplying the canal, ditch, or reservoir, at the point of diversion or damming, during the preceding year or years. For this purpose it will be necessary to give the maximum, minimum, and average flow in cubic feet per second for each month during the period for which records are available. In cases of reservoirs of 5,000 acre-feet capacity or more, or of ditches of 100 cubic feet per second capacity or more, the amount of water, in acre-feet, available for storage or diversion, and the amount of water which it is proposed to divert annually from the stream or streams affected, with the period during which the water is to be diverted. The length, cross-section, grade, and capacity of the ditches to be constructed and the characteristics of each ditch as affecting the flow of water. The surveyor or engineer of the applicant must certify to the above, and must certify that all available records (specifying them), official and otherwise, have been consulted. If there is no well-defined flow which can be measured, or if there is no record of the flow, the area of the watershed, average annual rainfall, and estimated run-off at the point of diversion or damming must be given.

(*j*) Maps, field notes, and other papers, as hereinafter required.

(*k*) If certified copies of the existing laws regarding corporations and irrigation, and of new laws as passed from time to time, be forwarded to the General Land Office by the governor or secretary of the State or Territory, the applicant may file, in lieu of the requirements of paragraphs *b* and *h* of this section, a certificate of the governor or secretary of state, under seal, that no change has been made since a given date, not later than that of the laws last forwarded.[5]

9. *Application by individuals.*—Individuals or associations of individuals making applications for right of way are requred to file the information called for in paragraphs *g*, *h*, *i*, and *j* of the preceding section. Associations of individuals must, in addition, file their articles of association; if there be none, the fact must be stated over the signature of each member of the association.

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[5] See additional paragraph, p. 1335.

10. *Field notes.*—Field notes of the surveys must be filed in duplicate, separate from the map, and in such form that they may be folded for filing. Complete field notes should not be placed on the map, but the following data should be shown thereon: (*a*) The station numbers where deflections or changes of numbering occur; (*b*) station numbers with distances to corners at points where the lines of the public surveys are crossed; and (*c*) the lines of reference of initial and terminal points, with their courses and distances. Typewritten field notes with clear carbon copies are preferred, as they expedite the examination of applications. The field notes should contain, in addition to the ordinary records of surveys, the data called for in this and in the following sections. They should state which line of the canal was run—whether middle or a specified side line. The stations or courses should be numbered in the field notes and on the map. The record should be so complete that from it the surveys could be accurately retraced by a competent surveyor with proper instruments. The field notes should show whether the lines were run on the true or the magnetic bearings, and if run on magnetic bearings the declination of the needle and date of determination must be stated. The kind and size of the instrument used in running the lines and its minimum reading on the horizontal circle should be noted. The line of survey should be that of the actual location of the proposed ditch and, as exactly as possible, the water line of the proposed reservoir. The method of running the grade lines of canals and the water lines of reservoirs must be described.

11. *Maps.*—The maps filed must be drawn on tracing linen in duplicate, and must be strictly conformable to the field notes of the survey. They must be filed in the land office for the district in which the right of way is located; but if the right of way is located in more than one district, duplicate maps and field notes need be filed in but one district and single sets in the others. Other canals, ditches, laterals, or reservoirs with which connections are made must be shown, but distinguished from those for which right of way is desired by ink of a different color.

The scale of the map should be 2,000 feet to the inch in the case of canals or ditches and 1,000 feet to the inch in the case of reservoirs. The scale may, however, be 1,000 feet to the inch in the case of canals or ditches and 500 feet to the inch in the case of reservoirs when such a scale is absolutely necessary to properly show the proposed works.

All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and on all lands affected by the right of way the smallest legal subdivisions (40-acre tracts and lots), must be shown. The section, township, and range must be clearly marked on the map.

The map must bear a statement of the width of each canal, ditch, or lateral at high-water line. If not of uniform width the limits of the deviations must be clearly defined on the map. The field notes should record the changes in such a manner as to admit of exact location on the ground. In the case of a pipe line the diameter of the pipe should be stated. The map must show the source of water supply.

In applications for right of way for a reservoir the capacity of the reservoir must be stated on the map in acre-feet (i. e., the number of acres that will be covered to a depth of 1 foot by the water that the reservoir will hold; 1 acre-foot is 43,560 cubic feet). The map must show the source of water supply for the reservoir and the location and height of the dam.

12. *Initial and terminal points.*—The terminal of a canal, ditch, or lateral should be fixed by reference of course and distance to the nearest existing corner of the public survey. The initial point of the survey of a reservoir should be fixed by reference of course and distance to the nearest existing corner outside the reservoir by a line that does not cross an area that will be covered with water when the reservoir is in use. The map, field notes, engineer's affidavit, and applicant's certificate (Forms 3 and 4) should each show these connections.

13. *Connections on unsurveyed land.*—When either terminal of a canal, ditch, or lateral is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant, and the single bearing and distance from the terminal point to the corner must be computed and noted on the map, in the engineer's affidavit, and in the applicant's certificate (Forms 3 and 4). The notes and all data for the computation of the traverse must be given in the field notes.

14. *Connections with monuments on unsurveyed land.*—When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. The field notes must give an accurate description of the mark and full data of the traverse as required above. The engineer's affidavit and applicant's certificate (Forms 3 and 4) must state the connections. These monuments are of great importance.

15. *Forms for canal, etc., on unsurveyed land.*—When a canal, ditch, or lateral lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately described in the field notes and in Forms 3 and 4 by connections of termini, length, and width, as though each portion were independent. (See secs. 12, 13, and 14.)

16. *Forms for reservoir on unsurveyed land.*—When a reservoir lies partly on unsurveyed land its initial point must be noted, as required for the termini of ditches in section 12. The reference line must not cross an area that will be covered with water when the reservoir is in use. The areas of the several parts lying on surveyed and unsurveyed land must be separately noted on the map, in the field notes, and in Forms 3 and 4.

17. *Right of way wholly on unsurveyed land.*—Maps showing canals, ditches, or reservoirs wholly upon unsurveyed lands may be received and placed on file in the General Land Office and the local land office of the district in which the land is located, for general information. The date of filing will be noted thereon; but the maps will not be submitted to nor approved by the Secretary of the Interior, as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps will not dispense with the filing of maps after the survey of the lands and within the time specified by the act

granting the right of way. If these maps are in all respects regular when filed, they will receive the Secretary's approval. In filing such maps the initial and terminal points will be fixed as indicated in sections 13 and 14.

18. *Connections with public survey corners.*—Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. In the case of a reservoir the distance must not be measured across an area which will be covered with water when the reservoir is in use. The map of the canal, ditch, or reservoir must show these distances, and the field notes must give the points of intersection and the distances. When corners are destroyed by the canal or reservoir, proceed as directed in sections 19 and 20.

19. *Witness monuments for destroyed public survey corners.*—Whenever a corner of the public survey will be covered by earth or water, or otherwise rendered useless, marked monuments, (one on each side of destroyed corner), must be set on each township or section line passing through, or one on each line terminating at, said corner. These monuments must comply with the requirements for witness corners of the Manual of Surveying Instructions issued by the General Land Office, and must be at such distance from the works as to be safe from interference during the construction and operation of the same. If two or more consecutive corners on the same line are destroyed, the monuments shall be set as required in the manual for the nearest corner on that line to be covered.

20. *Method of establishing witness monuments.*—The line on which such monument is set will be determined by running a random line from the corner to be destroyed to the first existing corner on the line to be marked by the monument, a temporary mark being set on the random line at the distance of the proposed monument. If the random line strikes the corner run to, the monument will be established at the place marked; if the random line passes to one side of the corner, the north and south or east and west distance to it will be measured and the true course calculated. The proper correction of the temporary mark will then be computed and a permanent monument set in the proper place. The field notes for the surveys establishing the monuments must be in duplicate and separate from those of the canal or reservoir, and must be certified by the surveyor under oath. They must comply with the form of field notes prescribed in the Manual of Surveying Instructions issued by the General Land Office.

When application is made for a canal or reservoir which is constructed and in operation, the method to be adopted in setting the monuments must be governed by the special features of each case and left to the judgment of the surveyor. No field notes will be accepted unless the lines on which the monuments are set conform to the lines shown by the field notes of the survey as made originally under the direction of this office, and unless the notes are in such form that the computation can be verified and the lines retraced on the ground.

21. *Affidavit and certificate required.*—The engineer's affidavit and applicant's certificate must both designate by termini (as in sections 12 to 17, inclusive) and length each canal, ditch, or lateral, and by initial point and area each reservoir shown on a map, for which right

of way is asked. This affidavit and this certificate (changed where necessary when an application is made by an individual or association of individuals) must be written on the map in duplicate. Applicants under the act of March 3, 1891, must include in the certificate (Form 4) the statement: "And I further certify that the right of way herein described is desired for the main purpose of irrigation." (See Forms 3 and 4.) No changes or additions are allowable in the substance of these forms, except when the facts differ from those assumed therein.

22. *Notation on maps and records.*—When maps are filed, the register will note on each the name of the land office and the date of filing over his written signature. Notations will also be made on the records of the local land office, as to each unpatented tract affected, that application for right of way for a canal (or reservoir) is pending, giving date of filing and name of applicant. The register will certify on each map, over his written signature, that unpatented land is affected by the proposed right of way. The maps and field notes in duplicate, and any other papers filed in connection with the application, will then be promptly transmitted to the General Land Office with report that the required notations have been made on the records of the local land office. Any valid right existing at the date of the filing of the right-of-way application will not be affected by the filing or approval thereof. (See sec. 4.) If no unpatented land is involved in the application, the local offices will reject it, allowing the usual right of appeal.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the canals, ditches, or reservoirs, as laid down on the map. They will also note the approval in ink, on the tract books, opposite each tract marked as required above and report to the General Land Office that notations have been made and the applicant notified of approval.

23. *Evidence of construction.*—When the canal, ditch, or reservoir is constructed, an affidavit of the engineer and certificate of the applicant (Forms 5 and 6) must be filed in the local office, in duplicate, for transmission to the General Land Office. No new map will be required, unless there are deviations from the right of way previously approved, either before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms changed to agree with the facts in the case. The map must show clearly the portions amended or bear a statement describing them, and the location must be described in the forms as the amended survey and the amended definite location. In such cases the applicant must file a relinquishment, under seal, of all rights under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior. If the canal or reservoir has been constructed on the location originally approved, and is to be used until the canal or reservoir on the amended location is ready for use, the relinquishment may be made to take effect upon the completion of the canal or reservoir on the amended location.

24. *Right of way on segregated reservoir sites.*—The act approved February 26, 1897 (29 Stat. 599), entitled "An act to provide for the

use and occupation of reservoir sites reserved," permits the approval of applications under the above act of 1891 for right of way upon reservoir sites reserved under authority of the acts of October 2, 1888 (25 Stat. 505, 526), and August 30, 1890 (26 Stat. 371, 391). The text of the act is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all reservoir sites reserved or to be reserved shall be open to use and occupation under the right-of-way act of March third, eighteen hundred and ninety-one. And any State is hereby authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this act shall always be subject to the control and regulation of the respective States and Territories in which such reservoirs are in whole or part situate.

When an application is made under this act a reference to it should be added to Forms 4 and 6. In other respects the application should be prepared according to the preceding regulations.

OIL PIPE LINES IN COLORADO AND WYOMING

25.[6] *Requirements.*—The act approved May 21, 1896 (29 Stat. 127), entitled "An act to grant right of way over the public domain for pipe lines in the States of Colorado and Wyoming," is similar in its requirements to the right-of-way act of March 3, 1891, and the preceding regulations furnish full information as to the preparation of the maps and papers. Applicants will be governed thereby so far as they are applicable.

The text of the act is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the right of way through the public lands of the United States situate in the State of Colorado and in the State of Wyoming outside of the boundary lines of the Yellowstone National Park is hereby granted to any pipe-line company or corporation formed for the purpose of transporting oils, crude or refined, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by said pipe line and twenty-five feet on each side of the center of line of the same; also the right to take from the public lands adjacent to the line of said pipe-line material, earth, and stone necessary for the construction of said pipe line.
>
> SEC. 2. That any company or corporation desiring to secure the benefits of this act shall within twelve months after the location of ten miles of the pipe line if the same be upon surveyed lands; and if the same be upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its line, and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way.
>
> SEC. 3. That if any section of said pipe line shall not be completed within five years after the location of said section the right herein granted shall be forfeited, as to any incomplete section of said pipe line, to the extent that the same is not completed at the date of the forfeiture.
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> SEC. 4. That nothing in this act shall authorize the use of such right of way except for the pipe line, and then only so far as may be necessary for its construction, maintenance, and care.

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[6] See sec. 30, Circular No. 672, p. 893.

RESERVOIR FOR WATERING STOCK

26.[7] *General provisions.*—The act approved January 13, 1897 (29 Stat. 484), entitled "An act providing for the location and purchase of public lands for reservoir sites," is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any person, live-stock company, or transportation corporation engaged in breeding, grazing, driving, or transporting live stock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such live stock, and shall have control of such reservoir, under regulations prescribed by the Secretary of the Interior, and the lands upon which the same is constructed, not exceeding one hundred and sixty acres, so long as such reservoir is maintained and water kept therein for such purposes: *Provided*, That such reservoir shall not be fenced and shall be open to the free use of any person desiring to water animals of any kind.
>
> SEC. 2. That any person, live-stock company, or corporation desiring to avail themselves of the provisions of this act shall file a declaratory statement in the United States land office in the district where the land is situated, which statement shall describe the land where such reservoir is to be or has been constructed; shall state what business such corporation is engaged in; specify the capacity of the reservoir in gallons, and whether such company, person, or corporation has filed upon other reservoir sites within the same county; and if so, how many.
>
> SEC. 3. That at any time after the completion of such reservoir or reservoirs which, if not completed at the date of the passage of this act, shall be constructed and completed within two years after filing such declaratory statement, such person, company, or corporation shall have the same accurately surveyed, as hereinafter provided, and shall file in the United States land office in the district in which such reservoir is located a map or plat showing the location of such reservoir, which map or plat shall be transmitted by the register and receiver of said United States land office to the Secretary of the Interior and approved by him, and thereafter such land shall be reserved from sale by the Secretary of the Interior so long as such reservoir is kept in repair and water kept therein.
>
> SEC. 4. That Congress may at any time amend, alter, or repeal this act.

27. *No lands sold.*—Although the title indicates that lands are to be sold for reservoir sites, the act does not provide for the sale of any lands, and therefore no lands can be sold under its provisions. The act, however, directs the Secretary of the Interior to reserve the lands from sale after the approval of the map showing the location of the reservoir. Homestead entries are allowed for lands embraced in reservoir declaratory statements, prior to the completion of the reservoir and the approval of the map, subject, however, to cancellation if the reservoir is completed within the time specified by the act.

28. *Declaratory statement.*—Any person, livestock company, or transportation corporation engaged in breeding, grazing, driving, or transporting livestock, desiring to obtain the benefits of the act must file a declaratory statement in the United States land office in the district in which the land is located.

29. *Application by corporation.*—When the applicant is a corporation there should be filed a copy of its articles of incorporation and proofs of its organization, as required in section 8, paragraphs *a*, *b*, *c*, *d*, *e*, *f*, and *k*, of these regulations. If these papers are filed with the first declaratory statement made by the company, a reference thereto by its number will be sufficient in any subsequent application by the company.

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[7] See Circulars Nos. 893, p. 1295, and 1028, p. 1296.

The declaratory statement must be made under oath and should be drawn in accordance with Form 9, and must contain the following:

(*a*) The post-office address of the applicant; the name of the county in which the reservoir is to be or has been constructed; the description by the smallest legal subdivision (40-acre tracts or lots) of the land sought to be reserved which under no circumstances must exceed 160 acres; certificate that the land is not occupied or otherwise claimed; certificate that to the best of the applicant's knowledge and belief the land is not mineral or otherwise reserved; statement of the business of the applicant, which statement shall include full and minute information concerning the extent to which he is engaged in breeding, grazing, driving, or transporting livestock, the number and kinds of such stock, the place where they are being bred or grazed, whether within an inclosure or upon uninclosed lands, and also the points from which and to which they are being driven or transported; description of the land owned or claimed by the applicant in the vicinity of the proposed reservoir and statement of its amount; certificate that no part of the land sought to be reserved is or will be fenced, that all the land will be kept open to the free use of any person desiring to water animals of any kind; and that the lands so sought to be reserved are not, by reason of their proximity to other lands reserved for reservoirs, excluded from reservation by the regulations and rulings of the Land Department.

(*b*) The location of the reservoir described by the smallest legal subdivisions (40-acre tracts or lots), its area in acres, its capacity in gallons, the source from which water is to be obtained for such reservoir, whether there are any streams or springs within 2 miles of the land sought to be reserved; and if so, where.

(*c*) The numbers, locations, and areas of all other reservoir sites filed upon by the applicant, especially designating those in the county in which the proposed reservoir is located.

30. *Action by the Land Department on declaratory statements, and size, location, and number of reservoir sites.*—When such declaratory statement is filed, the date of filing will be noted thereon over the signature of the officer receiving it, and the statements will be numbered according to order of June 1, 1908.[a] The register will make the usual notations on the records, in pencil, under the designation of "Reservoir declaratory statement, No. —," adding the date of the act. For the filing of such reservoir declaratory statement the local officers will be authorized to charge the usual fee. (Sec. 2238, U. S. Rev. Stat.) The local officers will forward the declaratory statement with the regular monthly returns, with abstracts, in the usual manner. In acting upon these statements the following general rules will be applied:

(*a*)[8] No reservation will be made for a reservoir of less than 250,000 gallons capacity, and for a reservoir of less than 500,000 gallons capacity not more than 10 acres can be reserved. For a reservoir of 500,000 gallons and less than 1,000,000 gallons capacity not more than 80 acres can be reserved. For a reservoir of 1,000,000 gallons and less than 1,500,000 gallons capacity not more than 120 acres can be reserved. For a reservoir of 1,500,000 gallons capacity or more 160 acres may be reserved.

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[a] The order of June 1, 1908 (37 L. D. 45), relates to accounts. For later instructions, see Circular No. 616, p. 48.

[8] See amendment, p. 1360.

(*b*) Not more than 160 acres shall be reserved for this purpose in any section.

(*c*) Not more than 160 acres shall be reserved for this purpose in one group of tracts adjoining or cornering upon each other.

(*d*) A distance of one-half mile must be left between any two groups of tracts which aggregate more than 160 acres.

(*e*) The local officers will reject any reservoir declaratory statement not in conformity with these rules.

(*f*) Lands so reserved shall not be fenced, but shall be kept open to the free use of any person desiring to water animals of any kind. If lands so reserved are at any time fenced or otherwise inclosed, or if they are not kept open to the free use of any person desiring to water animals of any kind, or if the reservoir applicant attempts to use them for any other purpose, or if the reservation is not obtained for the bona fide and exclusive purpose of constructing and maintaining a reservoir thereon according to law, the declaratory statement, upon any such matter being made to appear, will be canceled and all rights thereunder be declared at an end.

(*g*) Notwithstanding the action of the local officers in accepting any such declaratory statement, the Commissioner of the General Land Office will reject the same if upon considering the matters set forth therein it appears that the declaratory statement is not filed in good faith for the sole purpose of accomplishing what the law authorizes to be done.

31. *Construction.*—The reservoir must be completed and constructed within two years after the filing of the declaratory statement; otherwise the declaratory statement will be subject to cancellation.

32. *Map and field notes of constructed reservoir.*—After the construction and completion of the reservoir the applicant shall have the same accurately surveyed and mapped, in accordance with the instructions of sections 10 to 22, inclusive, so far as they are applicable. The map and field notes, which are not to be prepared in duplicate, must be filed in the proper local office. The map must bear Forms 10 and 11, and the field notes must be sworn to by the surveyor.

33. *Notations by local land officers.*—When the map, field notes, and other papers have been filed in the local office, the date of filing will be noted thereon and the proper notations will be made on the local office records, as in the case of the declaratory statement. Local officers will then promptly forward the maps and papers to the General Land Office.

34. *Approval.*—The map and papers will be examined in the General Land Office to determine whether they comply with the law and the regulations, and whether the amount of land desired is warranted by the showing made in the application. If found satisfactory they will be submitted to the Secretary of the Interior, and upon approval the lands shown to be necessary for the proper use and enjoyment of the reservoir will be reserved from other disposition so long as the reservoir is maintained and water kept therein for the purposes named in the act. Upon the receipt of notice of such

reservation from the General Land Office the local officers will make the proper notations on their records and report the making thereof promptly to the General Land Office.

35. *Annual proof of maintenance.*—In order that this reservation shall be continued it is necessary that the reservoir "shall be kept in repair and water kept therein." For this reason the owner of the reservoir will be required during the month of January of each year to file in the local office an affidavit to the effect that the reservoir has been kept in repair and water kept therein during the preceding year, and that all the provisions of the act have been complied with. Form 12 will be used for this affidavit. Upon failure to file such affidavit steps will be taken looking to the revocation of the reservation of the lands.

36.[9] *Reservoir on unsurveyed land.*—If the reservoir is located on unsurveyed land, the declaratory statement may be filed, the lands being described as closely as practicable.

The widely different conditions to be considered in the operations proposed by the applicants make it impossible to formulate regulations that will furnish the data necessary in all cases. Additional information will be called for whenever necessary for the proper consideration of any particular case.

TELEGRAPH AND TELEPHONE LINES, ELECTRICAL PLANTS, CANALS, AND RESERVOIRS [10]

37. *General statement.*—The act of February 15, 1901 (31 Stat. 790), entitled "An act relating to rights of way through certain parks, reservations, and other public lands," is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of

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[9] See amendment, p. 1361.

[10] These instructions were superseded for certain purposes by regulations of Mar. 1, 1913, p. 1340, and the act of Feb. 15, 1901 (31 Stat. 790), has been superseded, in part, by the Federal water power act of June 10, 1920 (41 Stat. 1063). See Circulars Nos. 893, p. 1295, and 1028, p. 1296.

> way for telegraph companies over the public domain: *And provided further,* That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

This act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forests, and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks in California, for every purpose contemplated by acts of January 21, 1895 (28 Stat. 635), May 14, 1896 (29 Stat. 120), and section 1 of the act of May 11, 1898 (30 Stat. 404), and for other purposes additional thereto, except for tramroads, the provisions relating to tramroads, contained in the act of 1895 and in section 1 of the act of 1898, aforesaid remaining unmodified and not being in any manner extended.

Although this act does not expressly repeal any provision of law relating to the granting of permission to use rights of way contained in the acts referred to, yet in view of the general scope and purpose of the act, and of the fact that Congress has, with the exception above noted, embodied therein the main features of the former acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later act should control in so far as it pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly all applications for permission to use rights of way for the purposes specified in this act must be submitted thereunder. Where, however, it is sought to acquire a right of way for the main purpose of irrigation, as contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1095), and section 2 of the act of May 11, 1898, supra, the application must be submitted in accordance with the regulations issued under said acts.

Application for permission to use the desired right of way through the public lands and parks designated in the act must be filed and permission must be granted, as herein provided, before any rights can be claimed thereunder.

38.[11] *Nature of grant.*—It is to be specially noted that this act does not make a grant in the nature of an easement, but authorizes a mere permission in the nature of a license, revocable at any time, and it gives no right whatever to take from the public lands, reservations, or parks, adjacent to the right of way, any material, earth, or stone for construction or other purpose.

39. *Applications for right of way through national forests.*—By section 1 of the act of February 1, 1905 (33 Stat. 628), it is provided:

> That the Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands.

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[11] See amendmetns, pp. 1335 and 1362.

Under this provision it has been determined that the Department of Agriculture is invested with jurisdiction to pass upon all applications under any law of the United States providing for the granting of a permission to occupy and use lands in a national forest, provided this occupation or use is temporary, and will in no wise affect the fee or cloud the title of the United States should the reserve be discontinued.

Therefore, when it is desired to obtain permission to use a right of way over public lands wholly within a national forest, an application should be prepared in accordance with the instructions issued by the Department of Agriculture, and the same filed with the officer in charge of such national forest.

In case the application involves rights and privileges upon public lands partly within and partly without a national forest, separate applications must be prepared, and the one affecting lands within the national forest filed with the forest officer and the other filed in the local land office.

40. *Applications for right of way through land outside of national forests.*—Where permission to use a right of way over lands wholly outside of national forests is desired, the application must be prepared and filed in accordance with sections 4 to 22, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit by one of them. If he is not a native-born citizen he must file the usual proofs of naturalization. The applicant must also set forth in the affidavit the purposes for which the right of way is to be used, and must show that he in good faith intends to utilize the same for such purposes.

41. *Buildings to be platted on map in main drawing and in separate drawing.*—When application is made for right of way for electrical or water plants, the location and extent of ground proposed to be occupied by buildings or other structures necessary to be used in connection therewith must be clearly designated on the map and described in the field notes and forms (7 and 8) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such proposed structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all the others are connected therewith by course and distance shown on the map. The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each one is necessary for a proper use of the right of way for the purposes contemplated in the act.

42. *Unsurveyed lands.*—Permission may be given under this act (Feb. 15, 1901) for rights of way upon unsurveyed lands, maps to be prepared in accordance with the requirements of this circular.

43.[12] *National parks.*—Whenever a right of way is through any of the national parks designated in the act, the applicant must show to the satisfaction of the department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. When the right of way is through any of the national parks designated in the act, the applicant must file the stipulations and bond required by section 6, but, in case of a telephone line, substitute the following: "That upon completion of the telephone lines they shall be subject to the free use of the park officers for all purposes incident to the administration of the park," for stipulation (e) under said section 6.

Whenever right of way within a park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the park. If the application and the showing made in support thereof is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and it is to be expressly understood, in accordance with the final proviso of the act, that any permission given thereunder may be modified or revoked by the Secretary or his successor, in his discretion, at any time, and shall not be held to confer any right, easement, or interest in, to, or over any public land or park. The final disposal by the United States of any tract traversed by the permitted right of way is of itself, without further act on the part of the department, a revocation of the permission so far as it affects that tract; and any permission granted hereunder is also subject so much further and future regulations as may be adopted by the department.

44. *Indian reservations.*—Applications for right of way under this act, all of which is located upon land within an Indian reservation, must be filed with the Commissioner of Indian Affairs. Applications for right of way affecting lands within and without Indian reservations must be filed in the local land office for forwarding to the Commissioner of the General Land Office. Before such applications are transmitted to the department they will be submitted by the Commissioner of the General Land Office to the Commissioner of Indian Affairs for such action and recommendation as that officer may deem proper in so far as the same pertains to such Indian reservation. Applicants will be required to furnish, in triplicate, so much of the map and field notes as relate to that portion of the right of way within an Indian reservation; and if the application is subsequently granted, one copy of such portion of the map and field notes as pertains to such reservation will be placed on file in the Indian Office. In this connection attention is directed to the provisions of section 3 of the act of March 3, 1901 (31 Stat. 1083), which authorizes the granting of permanent rights of way, in the nature of easements, for telegraph and telephone purposes only, through Indian reservations and other Indian lands, upon payment of proper compensation for the benefit of the Indians interested therein. The

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[12] See amendment, p. 1335.

provisions of the act of March 3, 1901, and the nature and character of the rights authorized to be secured thereunder differ materially from the provisions of the act on which these regulations are based and the rights authorized to be conferred thereunder. Applicants, therefore, desiring to secure permanent rights of way through Indian reservations or other Indian lands for telegraph and telephone purposes will be required to submit their applications therefor under the act of March 3, 1901, supra, in accordance with the then current regulations issued thereunder. (For existing regulations under said act, see regulations approved March 26, 1901.[b])

45. *Notations and procedure.*—Upon the filing of an application under this act, the register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map, over his written signature, the date of filing. If it appears that no portion of the public lands or parks designated in the act would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If vacant public land or lands in any park so designated are affected by the proposed right of way, the register will so certify on the map and duplicate over his signature, and will promptly transmit the same to the General Land Office with report that the required notations have been made.

When permission to use the right of way applied for is given by the Secretary of the Interior, a copy of the original map will be sent to the local officers, who will mark upon the township plats the line of the right of way and will note in pencil, opposite each tract of public land affected, that such permission has been given, the date thereof, and a reference to the act.

TRAMROADS

46. *Rights of way for tramroads.*—The Secretary of the Interior is authorized to permit the use of rights of way for tramroads through the public lands of the United States, not within the limits of any park, national forest, or military or Indian reservation under the provisions of the act of Congress of January 21, 1895 (28 Stat. 635), as amended by section 1 of the act of May 11, 1898 (30 Stat. 404). The act of January 21, 1895, entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be, and hereby is, authorized and empowered under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military, or Indian reservation, for tramroads, canals, or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

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[b] The regulations approved Mar. 26, 1901, have been superseded by regulations approved May 22, 1928. The latter are not carried in this publication. They are administered through the Bureau of Indian Affairs.

This act was amended by section 1 of the act of May 11, 1898, supra, as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January twenty-first, eighteen hundred and ninety-five, be, and the same is hereby, amended by adding thereto the following:
>
> "That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way upon the public lands of the United States, not within limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs, and fifty feet on each side of the marginal limits thereof, or fifty feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses."

Applications for permission to use rights of way for tramroads should be prepared and filed in accordance with the regulations hereinbefore prescribed relative to presentation of applications for rights of way under the act of February 15, 1901, and the then current regulations issued under the general railroad right-of-way act of March 3, 1875 (for existing regulations under the latter act see 32 L. D. 481), the prescribed forms in such regulations being so modified as to specify and relate to the acts under which the application is made. It is to be specially noted that the acts relating to tramroads do not authorize the granting of permission to use rights of way for such purpose within the limits of any park, national forest, or military or Indian reservation, and it is to be further noted that permission to use rights of way for tramroads over public lands, when granted, only confers a right in the nature of a license and is subject to all the conditions and limitations hereinbefore stated in section 43 of these regulations.

RIGHT OF WAY THROUGH NATIONAL FORESTS FOR DAMS, RESERVOIRS, WATER PLANTS, DITCHES, FLUMES, PIPES, TUNNELS, AND CANALS FOR MUNICIPAL OR MINING PURPOSES

47. *General statement.*—Section 4 of the act of Congress approved February 1, 1905 (33 Stat. 628), reads as follows:

> SEC. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, and hereby granted to citizens and corporations of the United States for municipal or mining purposes, and for the purposes of the milling and reduction of ores, during the period of the beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said reserves are respectively situated.

This act grants rights of way through national forests to citizens and corporations of the United States for the objects therein specified, during the period of their beneficial use, under rules and regulations to be prescribed by the Secretary of the Interior, and subject to the laws of the State or Territory in which said forests are situated.

All applications for the right of way for the purposes set forth in said act must be submitted in accordance herewith.

No construction will be allowed in national forests until an application for right of way has been regularly filed in accordance with these regulations and has been approved by the Secretary of the Interior, or unless permission has been specifically given.

48. *Nature of grant.*—The right granted is not in the nature of a grant of lands, but is a base or qualified fee, giving the possession and right of use of the land for the purposes contemplated by the act, during the period of the beneficial use. When the use ceases the right terminates, and thereupon proper steps will be taken to revoke the grant.

No right, whatever, is given to take any material, earth, or stone for construction or other purposes, nor is any right given to use any land outside of what is actually necessary for the construction and maintenance of the works.

49. *Preparation of applications.*—Applications for right of way under this act should be made in the form of a map and field notes, in duplicate, and must be filed in the local land office for the district in which the land traversed by the right of way is situated; if the land is in more than one district, duplicate maps and field notes need be filed in only one district and single sets in the others. The maps, field notes, evidence of water rights, etc., and, when the applicant is a corporation, the articles of incorporation and proofs of organization must be prepared and filed in accordance with sections 7 to 21, inclusive, appropriate changes being made in the prescribed forms so as to specify and relate to the act under which the application is made.

An affidavit by the applicant that he is a citizen of the United States must accompany the application. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit of one of them. A copy of their articles of association must also be furnished, or if there be none, the fact must be stated over the signature of each member of the association.

If the applicant is not a native-born citizen, he must file the usual proof of naturalization. The applicant must set forth in the affidavit the purposes for which the right of way is desired.

50. *Water-plant structures.*—When application is made for right of way for water plants, the location and extent of ground proposed to be occupied by buildings, or other structure necessary to be used in connection therewith, must be clearly designated on the map and described in the field notes and forms (7 and 8) by reference to course and distance from a corner of the public survey. In addition to being shown in connection with the main drawing, the buildings or other structures must be platted on the map in a separate drawing on a scale sufficiently large to show clearly their dimensions and relative positions. When two or more of such structures are to be located near each other, it will be sufficient to give the reference to a corner of the public survey for one of them, provided all others are connected therewith by course and distance shown on the map.

The applicant must also file an affidavit setting forth the dimensions and proposed use of each of the structures, and must show definitely that each is necessary to a proper enjoyment of the right of way granted by the act.

51. *Stipulation and bond.*—The applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of the national forest.

52. *Notation by register.*—Upon the filing of an application under this act, the register will note the same in pencil on the tract books, opposite the tracts traversed, giving date of filing and name of applicant, and also indorse on each map over his written signature the name of the land office and the date of filing.

If it appears that no portion of the public lands in a national forest would be affected by the approval of such maps, they will be returned to the applicant with notice of that fact. If unpatented lands are affected by the proposed right of way, the register will so certify on the map and duplicate, over his signature, and will promptly transmit the same to the General Land Office, with report that the required notations have been made.

Upon the approval of a map of location by the Secretary of the Interior, the duplicate copy will be sent to the local officers, who will mark upon the township plats the lines of the right of way as laid down on the map. They will also note the approval in ink on the tract books, opposite each legal subdivision affected, with a reference to the act mentioned on the map.

53.[13] *Right of way through unsurveyed land.*—Maps showing reservoirs, canals, water plants, etc., wholly upon unsurveyed lands, will be received and placed on file in the General Land Office and the local land office of the district in which the same is located, for general information, and the date of filing will be noted thereon.

FRED DENNETT, *Commissioner.*

Approved June 6, 1908.

FRANK PIERCE, *Acting Secretary.*

(Forms omitted.)

[Reported, 37 L. D. 787]

REGULATIONS CONCERNING RAILROAD RIGHTS OF WAY OVER THE PUBLIC LANDS AND FORFEITURE ACTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 21, 1909.

The following is a copy of an act of Congress approved March 3, 1875, entitled "An act granting to railroads the right of way through the public lands of the United States:"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take, from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also, ground adjacent to such right of way for station buildings, depots, machine shops, side tracks, turn-outs, and water stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

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[13] See amendment, p. 1360.

Sec. 2. That any railroad company whose right of way, or whose track or roadbed upon such right of way, passes through any canyon, pass, or defile, shall not prevent any other railroad company from the use and occupancy of said canyon, pass, or defile, for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade. And the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any wagon or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway where such road or highway may be necessary for the public accommodation; and where any change in the location of such wagon road is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall, before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road: *Provided*, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile.

Sec. 3. That the legislature of the proper Territory may provide for the manner in which private lands and possessory claims on the public lands of the United States may be condemned; and, where such provision shall not have been made, such condemnation may be made in accordance with section three of the act entitled "An act [to amend an act entitled an act] to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two," approved July second, eighteen hundred and sixty-four.

Sec. 4. That any railroad company desiring to secure the benefits of this act shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and, upon approval thereof by the Secretary of the Interior, the same shall be noted upon the plats in said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, That if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road.

Sec. 5. That this act shall not apply to any lands within the limits of any military park, or Indian reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty stipulation or by act of Congress heretofore passed.

Sec. 6. That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any part thereof.

Approved, March 3, 1875. (18 Stat. p. 482.)

By the act of Congress, approved March 3, 1899 (30 Stat. 1233), it is provided:

That in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any forest reservation or reservoir site when in his judgment the public interests will not be injuriously affected thereby.

1. *Nature of grant.*—A railroad company to which a right of way is granted does not secure a full and complete title to the land on which the right of way is located. It obtains only the right to use the land for the purposes for which it is granted and for no other purpose, and may hold such possession, if it is necessary to that use, as long and only as long as that use continues. The Government conveys the fee simple title in the land over which the right of way is granted to the person to whom patent issues for the legal subdivision on which the right of way is located, and such patentee

takes the fee, subject only to the railroad company's right of use and possession. All persons settling on a tract of public land, to part of which right of way has attached, take the same subject to such right of way, and at the total area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right of way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of this department.

2. *National forest.*—When a right of way is located within a national forest the applicant must enter into such stipulation and execute such bond as the Forest Service may require for the protection of such national forest.

3. *Proposed national forest.*—When a right of way is located within a proposed national forest the applicant must file a stipulation under seal incorporating the following:

(*a*) That the proposed right of way is not so located as to interfere with the proper occupation of the reservation by the Government.

(*b*) That the applicant will cut no timber from the reserve outside the right of way and will remove no timber within the right of way, except only such as is rendered necessary for the proper use and enjoyment of the privilege for which application is made.

(*c*) That he will remove from the reservation or destroy, under such safeguards as may be deemed necessary by the General Land Office, all standing, fallen, and dead timber, as well as all tops, lops, brush, and refuse cuttings on the right of way for such distance on each side of the central line as may be required by the General Land Office to protect the forest from fire.

(*d*) That the applicant will furnish free of charge such assistance in men and material for fighting fires as may be spared without serious injury to the applicant's business.

(*e*) That should any portion of said right of way be included within a national forest the applicant shall clear and keep clear, as required by the Forester, such width on each side of the track as shall be determined by the Forester, and the applicant shall pay, as required by the Forester, for all national forest timber cut or destroyed in such clearing outside said right of way.

The applicant will also be required to give bond, to be approved by the Commissioner of the General Land Office, stipulating that the United States will be compensated for any and all damage to the public lands, timber, natural curiosities, or other public property on such proposed national forest, or upon the lands of the United States, by reason of such use and occupation of the proposed reserve, regardless of the cause or circumstances under which such damage may occur. A bond furnished by any surety company that has complied with the provisions of the act of August 13, 1894 (28 Stat. 279), will be accepted. The amount of the bond can not be fixed until the application has been submitted to the General Land Office, when a form of bond will be furnished and the amount thereof fixed.

No construction will be allowed in a national forest or a proposed national forest until an application for right of way has been regularly filed in accordance with the laws of the United States and has been approved, or has been considered by this department, and permission for such construction has been specifically given.

4. *Right of way over private land.*—Whenever any right of way shall pass over private land or possessory claims on lands of the United States, condemnation of the right of way across the same may be made in accordance with the provisions of section 3 of the act, or the right can be purchased as provided by section 2288 of the Revised Statutes, as amended by section 3 of the act of March 3, 1891 (26 Stat. 1095).

5. *Articles of incorporation, etc.*—Any railroad company desiring to obtain the benefits of the law is required to file in the General Land Office, or with the register of the land district in which the principal terminus of the road is to be located, who will forward them to the General Land Office—

(*a*) A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal, or by the secretary of the State or Territory where organized.

(*b*) A copy of the state or territorial law under which the company was organized, with the certificate of the governor or secretary of the State or Territory that the same was the law at the date of incorporation. (See par. *g* of this section.)

(*c*) If the law directs that the articles of incorporation or other papers connected with the organization be filed with any state or territorial officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(*d*) When a company is operating in a State or Territory other than that in which it is incorporated it must submit the certificate of the proper officer of the State or Territory that it has complied with the laws of that State or Territory governing foreign corporations to the extent required to entitle the company to operate in such State or Territory.

No forms are prescribed for the above portion of the proofs required, as each case must be governed to some extent by the laws of the State or Territory.

(*e*) The official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory in which it is incorporated. (Form 1.)

(*f*) A certificate by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2.)

(*g*) If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to the General Land Office by the governor or secretary of any State or Territory, a company organized in such State or Territory may file, in lieu of the requirements of paragraph (*b*) of this section a certificate of the governor or secretary of the State or Territory that no change has been made since a given date, not later than that of the laws last forwarded.

6. *Maps.*—The word profile as used in this act is understood to intend a map of alignment. All such maps and plats of station

grounds are required by the act to be filed with the register of the land office for the district where the right of way is located; but if the right of way is located in more than one district, duplicate maps and field notes need be filed in but one district, and single sets in the others. The maps must be drawn on tracing linen, in duplicate, and must be strictly conformable to the field notes of the survey of the line of route or of the station grounds.

The maps should show any other road crossed, or with which connection is made, and whenever possible the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which applicant asks right of way. Field notes of the surveys should be written along the line on the map. If the map would thereby be too much crowded to be easily read. then duplicate field notes should be filed separate from the map. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes on the map. In all cases station numbers should be given on the map where changes of numbering occur and where the lines of the public surveys are crossed, with distances to the nearest existing corner. The map must also show the lines of reference of initial and terminal points, with their courses and distances.

7. *Field notes.*—Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were run on true or magnetic bearings, and if run on magnetic bearings the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public-survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

8. *Scale of maps.*—The scale of maps showing the line of route should be 2,000 feet to the inch ordinarily, but when absolutely necessary the scale may be increased to 1,000 feet to the inch. These scales are fixed so that maps may be readily handled and filed. In most cases, by furnishing separate field notes an increase of scale may be avoided. Plats of station grounds should be drawn on a scale of 500 feet to the inch, and must be filed separately from the map of the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto.

9. *Public-land subdivisions.*—All subdivisions of the public surveys represented on the map should have their entire boundaries drawn, and all lands affected by the right of way the smallest legal subdivisions (40-acre tracts and lots) must be shown.

10. *Termini.*—The termini of the line of road should be fixed by reference of course and distance to the nearest existing corner of the public survey. The map, field notes, engineer's affidavit, and president's certificate (Forms 3 and 4), should each show these connections. The company must certify in Form 4 that the road is to be operated as a common carrier of passengers and freight. A tract for station grounds must be similarly referenced and described on the plat and in Forms 7 and 8, except when the tract conforms to

the subdivisions of the public survey, in which case it may be described in the forms according to the subdivisions.

11. *Connections on unsurveyed land.*—When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant, and the single bearing and distance from the terminal point to the corner must be computed and noted on the map, in the engineer's affidavit, and in the president's certificate, (Forms 3 and 4). The notes and all data for the computation of the traverse must be given.

12. *Connections with monuments on unsurveyed land.*—When an established corner of the public survey is more than 6 miles distant this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark and must give the course and distance to the terminus. There must be given an accurate description of the mark and full data of the traverse, as required above. The engineer's affidavit and president's certificate (Forms 3 and 4) must state the connections. These monuments are of great importance.

13. *Surveyed and unsurveyed land.*—When the line of route lies partly on unsurveyed land, each portion lying within surveyed and unsurveyed land will be separately stated in Forms 3 and 4 by connection of termini and length, as though each portion were independent.

When lands desired for station grounds lie partly on unsurveyed land, the areas of the several parts on surveyed and unsurveyed land must be separately stated on the map and in Forms 7 and 8.

Lines of route or station grounds lying partly upon unsurveyed land can be approved if the application and accompanying maps and papers conform to these regulations, but the approval will only relate to that portion traversing the surveyed lands. (For right of way wholly on unsurveyed land, see sec. 14.)

14. *Right of way wholly on unsurveyed land.*—Maps of lines of route or plats of station grounds lying wholly on unsurveyed lands may be received and placed on file in the General Land Office and the local land office of the district in which the same is situated, for general information, and the date of filing will be noted thereon; but the same will not be submitted to nor approved by the Secretary of the Interior, as the act makes no provision for the approval of any but maps showing the location in connection with the public surveys. The filing of such maps or plats will not dispense with the filing of maps or plats after the survey of the lands and within the time limited in the act granting the right of way. If these maps or plats are in all respects regular when filed, they will receive the Secretary's approval. In filing such maps or plats the initial and terminal points will be fixed as indicated in sections 11 and 12.

15. *Connections with public survey corners.*—Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.

16. *Affidavit and certificate required.*—The engineer's affidavit and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made. (See Forms 3 and 4.) Station grounds must be described by initial point and area in acres (see Forms 7 and 8), and when they are on surveyed land the smallest legal subdivision in which they are located should be stated. No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein. (See sec. 10.)

17. *Spurs.*—Where right of way is desired for spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer branch lines separate maps should be filed.

18. *Notation on maps and records.*—When maps are filed the register will note on each the name of the land office and the date of filing, over his written signature. Notations will also be made on the records of the local land office, as to each unpatented tract affected, that application for right of way is pending, giving date of filing and name of applicant. The register will certify on each map, over his written signature, that unpatented land is affected by the proposed right of way. The maps and field notes in duplicate, and any other papers filed in connection with the application, will then be promptly transmitted to the General Land Office with report that the required notations have been made on the records of the local land office. Any valid right existing at the date of the filing of the right of way application will not be affected by the filing or approval thereof. (See sec. 1.) If no unpatented land is involved in the application the local officers will reject it, allowing the usual right of appeal.

Upon the approval of a map of location by the Secretary of the Interior the duplicate copy will be sent to the local officers, who will mark upon the township plats the line of the railroad or location of station grounds, as laid down on the map or plat. They will also note, in ink, on the tract books, opposite each tract marked as required by section 18, that the same is to be disposed of subject to the right of way for the railroad company's line of road or station grounds.

19. *Evidence of construction.*—When the railroad is constructed, an affidavit of the engineer and certificate of the president (Forms 5 and 6) must be filed in the local office, in duplicate, for transmission to the General Land Office. No new map will be required, except in case of deviations from the right of way previously approved, whether before or after construction, when there must be filed new maps and field notes in full, as herein provided, bearing proper forms, changed to agree with the facts in the case. The map must show clearly the portions amended, or bear a statement describing them, and the location must be described in the forms as the amended survey and the amended definite location. In such cases the company must file a relinquishment, under seal, of all rights

under the former approval as to the portions amended, said relinquishment to take effect when the map of amended definite location is approved by the Secretary of the Interior.

20. *Right of way through lands segregated from the Yosemite National Park and included in the Sierra National Forest.*—The act of February 7, 1905 (33 Stat. 702), so far as it relates to the use of the lands within the addition to the Sierra National Forest made by it, for right-of-way purposes, is as follows:

> *Provided*, That all those tracts or parcels of land described in section one of the said act of October first, eighteen hundred and ninety, and not included within the metes and bounds of the land above described, be, and the same are hereby, included in and made part of the Sierra Forest Reserve: *And provided further*, That the Secretary of the Interior may require the payment of such price as he may deem proper for privileges on the land herein segregated from the Yosemite National Park and made a part of the Sierra Forest Reserve accorded under the act approved February fifteenth, nineteen hundred and one, relating to rights of way over certain parks, reservations, and other lands, and other acts concerning rights of way over public lands; and the moneys received from the privileges accorded on the lands herein segregated and included in the Sierra Forest Reserve shall be paid into the Treasury of the United States, to be expended, under the direction of the Secretary of the Interior, in the management, improvement, and protection of the forest lands herein set aside and reserved, which shall hereafter be known as the "Yosemite National Park."
>
> SEC. 2. That none of the lands patented and in private ownership in the area hereby included in the Sierra Forest Reserve shall have the privileges of the lieu-land scrip provisions of the land laws, but otherwise to be in all respects under the laws and regulations affecting the forest reserves, and immediately upon the passage of this act all laws, rules, and regulations affecting forest reservations, including the right to change the boundaries thereof by executive proclamation, shall take effect and be in force within the limits of the territory excluded by this act from the Yosemite National Park, except as herein otherwise provided.

Before approval is given any application for right of way affecting these lands, the Secretary of the Interior will fix the price for the privilege, and payment thereof must be made. The applicant must expressly agree to enter into a contract to make further annual payments for such privilege should the Secretary of the Interior, upon consideration of the facts in each particular case, so prescribe. Such payments, when required, shall be made to the Secretary of the Interior, to be placed to the credit of the special fund provided for in this act, to be expended in the management, improvement, and protection of the Yosemite National Park.

An applicant for the privilege of transporting persons and material through the reserve to the Yosemite National Park will also be required, when in the judgment of the Secretary of the Interior the convenience of the public requires it, to file in the department a stipulation agreeing to transport the cars of any other person or company over its road upon the payment of such reasonable charge as may be determined upon between the parties, or by the Secretary of the Interior.

FRED. DENNETT, *Commissioner.*

Approved May 21, 1909.

R. A. BALLINGER, *Secretary.*

(Forms and acts omitted.)

[Reported, 38 L. D. 284]

NOTATION OF RIGHTS OF WAY ON ORIGINAL AND FINAL ENTRY PAPERS AND PATENTS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 3, 1909.[14]

Registers and Receivers, United States Land Offices.

SIRS: In order that all persons making entry of public lands which are affected by rights of way may have actual notice thereof, you are directed to note upon the original entry papers and upon the receiver's receipt issued to the entryman a reference to such right of way. You will make no such notation upon the final entry papers unless the right of way has been granted under an act of Congress which does not in terms protect the grantee against subsequent adverse rights, in which case you will place the same notation as to right of way upon the final entry papers, so that the reservation of the right of way will be made in the patent when issued. (23 L. D. 67.)

Very respectfully,

FRED. DENNETT, *Commissioner.*

Approved.

R. A. BALLINGER, *Secretary.*

[Reported, 38 L. D. 399]

NOTATION OF RIGHTS OF WAY ON ENTRY PAPERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 19, 1910.

Registers and Receivers, United States Land Offices.

SIRS: The first sentence of the circular of November 3, 1909 (38 L. D. 284), is hereby amended to read as follows:

> In order that all persons making entry of public lands which are affected by rights of way may have actual notice thereof, you are directed to note upon the original entry papers and upon the notice of allowance of the application (Form 4-279) issued to the entryman, a reference to such right of way.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

FRANK PIERCE, *Acting Secretary.*

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[14] See amendment, p. 1332. Also see Circular No. 78, p. 1333.

[Reported, 40 L. D. 398]

CIRCULAR No. 78

NOTATION OF RIGHTS OF WAY ON ENTRY PAPERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 2, 1912.

Registers and Receivers, United States Land Offices.

SIRS: Some misapprehension having arisen as to the proper construction of departmental circulars of November 3, 1909 (38 L. D. 284), and January 19, 1910 (38 L. D. 399), governing notation of rights of way on entry papers, you are now instructed that such notations should be made only where your records show that the land involved, or some part of it, is covered by an approved application for right of way. In this connection, attention is directed to the decision of the United States Supreme Court in the case of Minneapolis, St. Paul & Sault Ste. Marie Railway Co. *v.* Doughty (208 U. S. 251.) Applicants to enter public lands that are affected by a mere pending application for right of way, should be verbally informed thereof, and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

SAMUEL ADAMS,
First Assistant Secretary.

[Reported, 42 L. D. 396]

RAILROAD RIGHTS OF WAY—RESERVATION FOR CANALS AND DITCHES IN PATENTS

DEPARTMENT OF THE INTERIOR,
Washington, April 19, 1912.

First Assistant Secretary Adams to the Commissioner of the General Land Office:

Your letter of April 13, 1912, refers to recent order directing the insertion in approvals of rights of way granted under various easement acts of the reservation of a right of way through the lands for ditches and canals constructed by the authority of the United States, and asks instructions as to whether a similar reservation should be inserted in patents issued for lands granted to railroad companies, indemnity selections made by such companies, and selections made by the Northern Pacific Railway Co. under the act of July 1, 1898 (30 Stat. 597).

The act of August 30, 1890 (26 Stat. 391), requires—

> that in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

In the case of grants of lands to railroad companies in what are commonly known as the granted or primary limits, the right of the railroad company thereto under the law attaches if the lands be subject to the grant at the date of the definite location of the railroad, and as to such lands, where title vested prior to August 30, 1890, the reservation clause should not be inserted in patents issued.

As a rule, indemnity selections are required to be made upon designated sections within the limits defined by law, but selections can only be made after and upon the basis of a loss occurring within the primary limits. Until selection the lands remain subject to appropriation and disposition under the applicable laws and no vested right in or to the selected lands accrues until the approval of the selections.

The act of July 1, 1898 (30 Stat. 597), which permits the Northern Pacific Railway Co. to select nonmineral public lands in any State or Territory through which the road passes in lieu of lands within the granted or indemnity limits purchased from the United States or claimed in good faith by any qualified settler under color of title or claim of right under the public land laws, requires a selection by the railroad company, and until the lands are so selected, same remain disposable under the public land laws.

If of the character subject to selection and the selections be regularly made and perfected as required by the law, patents are issued to the company, but its right, in so far as the selected lands are concerned, does not relate back to the date of the original grant of lands to the company or to the date of the definite location of the road.

As in the case of indemnity selections, hereinbefore described, it has a right which, though based upon a grant made prior to August 30, 1890, is not initiated so far as the selected land is concerned, until the filing of selection. You are accordingly advised as follows:

The reservation required to be inserted in patents for public lands west of the one hundredth meridian is not required to be inserted in patents issued for lands to which the grant or right of a railroad company attached prior to the date of the said act. It should be inserted in all patents for lands covered by indemnity selections made by railroad companies and in selections made by the Northern Pacific Railroad Co. under the provisions of the act of July 1, 1898, supra, in all cases where such indemnity or other selections are approved subsequent to August 30, 1890.

[Reported, 41 L. D. 13]

CIRCULAR No. 108

ADDENDA TO THE RIGHT-OF-WAY REGULATIONS FOR CANALS, DITCHES, AND RESERVOIRS, ETC., OF JUNE 6, 1908

DEPARTMENT OF THE INTERIOR,
Washington, May 7, 1912.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: In the matter of the regulations approved June 6, 1908, concerning rights of way over public lands and reservations for canals, ditches, and reservoirs, and the use of a right of way for various purposes, I have to direct that modifications be made of paragraphs 38 and 43 thereof. As modified, these paragraphs will read as follows:

> 38. *Nature of grant.*—It is to be specially noted that this act does not make a grant in the nature of an easement but authorizes a mere permit in the nature of a license, which permit may be revoked by the Secretary, or his successor, at any time in his discretion. Further, it gives no right whatever to take from public lands, reservations, or parks adjacent to the right of way any materials, earth or stone, for construction or other purposes.
>
> 43. *National parks.*—Whenever a right of way is through any of the national parks designated in the act the applicant must show to the satisfaction of the department that the location and use of the right of way for the purposes contemplated will not interfere with the uses and purposes for which the park was originally dedicated, and will not result in damage or injury to the natural conditions of property or scenery existing therein. The applicant must also file the stipulations and bond required by section 6, but, in case of a telephone line, substitute the following: "That upon completion of the telephone lines they shall be subject to the free use of the park officers for all purposes incident to the administration of the park," for stipulation (*e*) under said section 6.
>
> Whenever right of way within a park is desired for operations in connection with mining, quarrying, cutting timber, or manufacturing lumber, a satisfactory showing must be made of the applicant's right to engage in such operations within the park. If the application and the showing made in support thereof is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the department.

You will see that these changes are made in an appropriate way in circulars hereafter distributed under this act.

Very respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

CIRCULAR No. 194

ADDENDA TO RIGHT-OF-WAY REGULATIONS OF JUNE 6, 1908

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 16, 1912.

Registers and Receivers, United States Land Offices.

SIRS: Under date of July 10, 1912, the department modified paragraphs *a* and *f* of section 8 of the regulations for rights of way over public lands and reservations (36 L. D. 567), to read as follows:

> (*a*) A copy of its articles of incorporation duly certified to by the proper officers of the company under its corporate seal, or by the secretary of the State

or Territory where organized; also an uncertified copy of the articles of incorporation.

(*f*) A true list, in duplicate, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs.

On October 8, 1912, the department added to said section 8 an additional paragraph (*l*), as follows:

(*l*) A separate statement, describing as near as may reasonably be done, by legal subdivisions, if practicable, the land to be irrigated by the proposed project; the approximate acreage and general condition and character of the lands; their ownership generally, and whether public or private; such negotiations or arrangements as have been had between the applicant and the owners or occupants of the lands.

Respectfully,

FRED DENNETT, *Commissioner.*

[Reported, 41 L. D. 454]

REGULATIONS CONCERNING GRANTS FOR RIGHTS OF WAY OVER, ACROSS, AND UPON THE PUBLIC LANDS AND RESERVATIONS OF THE UNITED STATES UNDER THE JURISDICTION OF THE DEPARTMENT OF THE INTERIOR FOR ELECTRICAL POLES AND LINES FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICAL POWER, AND FOR POLES AND LINES FOR TELEPHONE AND TELEGRAPH PURPOSES

DEPARTMENT OF THE INTERIOR,
January 6, 1913.[20]

GENERAL STATEMENT

The act of March 4, 1911 [21] (36 Stat. 1253–1254), provides, among other things, as follows:

That the head of the department having jurisdiction over the lands be, and he hereby is, authorized and empowered, under general regulations to be fixed by him, to grant an easement for rights of way, for a period not exceeding fifty years from the date of the issuance of such grant, over, across, and upon the public lands, national forests, and reservations of the United States for electrical poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, to the extent of twenty feet on each side of the center line of such electrical, telephone, and telegraph lines and poles, to any citizen, association, or corporation of the United States, where it is intended by such to exercise the right of way herein granted for any one or more of the purposes herein named: *Provided*, That such right of way shall be allowed within or through any national park, national forest, military, Indian, or any other reservation only upon the approval of the chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest: *Provided*, That all or any part of such right of way may be forfeited and annulled by declaration of the head of the department having jurisdiction over the lands for nonuse for a period of two years or for abandonment.

That any citizen, association, or corporation of the United States to whom there has heretofore been issued a permit for any of the purposes specified herein under any existing law may obtain the benefit of this act upon the same terms and conditions as shall be required of citizens, associations, or corporations hereafter making application under the provisions of this statute.

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[20] Amended by regulations approved Oct. 25, 1913, p. 1356.

[21] This act has been superseded, in part, by the Federal water power act of June 10, 1920 (41 Stat. 1063).

For the purposes of this statute, national parks, Indian reservations, and reservations for water power sites, irrigation, classification of lands, or other public purposes, created under the withdrawal act of June 25, 1910 (36 Stat. 847), are considered to be under the jurisdiction of the Department of the Interior; military reservations under the jurisdiction of the War Department; and reservations created for the special occupancy, use, or control of other departments under the jurisdiction of such departments, respectively. The Attorney General on February 3, 1912, advised the Secretaries of the Interior and Agriculture that, for this purpose, national forests are under the jurisdiction of the Department of Agriculture (29 Op. 303).

It will be observed that this act, which authorizes the granting of easements for electrical power transmission, and telephone and telegraph lines for stated periods not to exceed 50 years, follows, as closely as is possible in the accomplishment of its purposes, the language of the act of February 15, 1901 (31 Stat. 790), which authorizes mere revocable permits or licenses not only for such lines but also for other purposes. This act, therefore, merely authorizes additional or larger grants and does not modify or repeal the act of 1901, and should be construed and applied in harmony with it.

REGULATIONS

REGULATION 1. Applications for rights of way for electric transmission lines under the said act of March 4, 1911, shall be presented and considered, except as herein otherwise provided, in the form and manner prescribed by the regulations issued August 24, 1912, and hereafter issued under the said act of February 15, 1901, in so far as the regulations issued under the act last aforesaid apply to electric transmission lines.

REG. 2. Applications for rights of way under the said act of March 4, 1911, for telephone and telegraph lines, shall be presented and considered, except as herein otherwise provided, in the form and manner prescribed by the regulations heretofore and hereafter issued under the said act of February 15, 1901, in so far as the regulations under the act last aforesaid apply to telephone and telegraph lines.

REG. 3. Applications for rights of way for electric transmission lines (hereinafter called "transmission line applications") are to be accompanied by:

(*a*) A description of the plant or plants which generate or will generate the power to be transmitted over such lines (hereinafter called "the connected generating plant," which term shall include all hydraulic, hydroelectric, and electric generating works), such description to be in sufficient detail to show, to the satisfaction of the Secretary of the Interior, the character, capacity, and location of such plant.

(*b*) A statement in detail to the Secretary of the Interior showing whether the connected generating plant is located, in whole or in part, on land owned or controlled by the United States, or on land not so owned and controlled, and whether any part of the connected generating plant or of the system of transmission and distribution in connection with such plant affects lands in reservations other than those under the jurisdiction of the Secretary of the Interior.

REG. 4. Rights of way granted under these regulations shall not be used for the transmission of any power generated otherwise than by and at "the connected generating plant" as above defined in regulation 3 until the Secretary of the Interior shall have given written authority for such use and then only on the terms and conditions expressed in such written authority.

REG. 5. Grants of rights of way shall be for a period of 50 years or for such less period as may be expressed in the grant in any particular case.

Reg. 6.[22] Before any right of way is granted the applicant shall execute and file in or in amendment of his application a statement of the particular terms and conditions upon which and subject to which the applicant asks to receive and agrees to take the grant of right of way, and the grant may be made subject to such terms and conditions, in which case such terms and conditions, together with these regulations, shall define and limit the grant, which shall be effective only if and in so far as it is subject to such terms, conditions, and regulations. Such original or amended application with the approval thereof by the Secretary of the Interior shall together constitute the grant and express the terms and conditions thereof, and the fact of such approval shall be noted on the application maps.

Reg. 7. The grantee shall construct and thereafter during the term of the grant maintain and continuously operate for the transmission of electrical power the transmission lines for which right of way is granted except in so far as this condition may be temporarily waived by the Secretary of the Interior on a full showing to his satisfaction that such continuous operation is prevented by inevitable accidents or contingencies.

Reg. 8. The grantee shall annually, on or before the 1st day of February next following the close of each calendar year of the period for which right of way is granted, pay, by certified check to the order of the Secretary of the Interior, the following rental charges: For all energy delivered during the preceding calendar year of the first decade after the date of the grant over the lines for which right of way is granted, a rental charge of 5 mills ($0.005) per 1,000 kilowatt hours; and for all energy so delivered during the preceding calendar year of each decade after the first, a rental charge at such reasonable rate per 1,000 kilowatt hours so delivered as the Secretary of the Interior may fix before the beginning of such decade: *Provided*, That the burden of proving that any rate fixed by the said Secretary under this regulation is not reasonable shall be and remain upon the grantee: *Provided further*, That if no rate is so fixed for any particular decade, then the rental charge to be paid for each year of such decade shall be calculated and paid upon all energy delivered during such year over the lines for which right of way is granted at the rate per 1,000 kilowatt hours fixed for the preceding decade: *Provided further*, That any payment duly made by the grantee to the head or other officer of any department of the Federal Government having jurisdiction over national forests or other reservations of the United States occupied or used by any portion of the lines shown on the maps whereon approval of the grantee's application is noted under regulation 6 hereof, such payment having been made as or on account of a rental charge for such occupancy and use for any calendar year during the period for which right of way is granted under these regulations, shall be credited upon the rental charge imposed under this regulation for the same year, but such credit shall in no case exceed the total of the rental charge so imposed for such year.

Reg. 9. The grantee shall install at such places and maintain in good operating condition in such manner as shall be approved by the said Secretary accurate meters, or other devices approved by the said Secretary, adequate for the determination of the amount of electric energy delivered over the lines for which right of way is granted, or any part thereof, and shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the said Secretary, and shall make a return during January of each year under oath of such of the records of measurements for the year ending on December 31 preceding made by or in the possession of the grantee as may be required by the said Secretary.

Reg. 10. The books and records of the grantee shall be open at all times to the inspection and examination of the said Secretary, or other officer or agent of the United States duly authorized to make such inspection and examination.

Reg. 11. The lines constructed, maintained, and operated on the right of way granted shall not be owned, leased, trusteed, possessed, or controlled by any device or in any manner so that they form part of or in any way effect any combination in the form of an unlawful trust, or form the subject of any unlawful contract or conspiracy to limit the output of electric energy, or in unlawful restraint of trade with foreign nations or between two or more States, or within any one State, in the generation, sale, or distribution of electric energy or in the transmission of communications by telephone or telegraph.

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[22] See amendment, p. 1356.

REG. 12. The grantee shall protect in a workmanlike manner according to the usual standards of safety for construction, operation, and maintenance in such cases all Government and other telephone, telegraph, and power-transmission lines at crossings of and at all places in proximity to the grantee's transmission, telephone, and telegraph lines on the right of way granted, and shall maintain his transmission, telephone, and telegraph lines thereon in such manner as not to menace life or property.

REG. 13. The grantee shall clear and keep clear all lands owned or controlled by the United States along the lines for which right of way is granted to such width and in such manner as the officer of the United States having supervision of such lands may direct.

REG. 14. The grantee shall, to the satisfaction of the officer last above described, dispose of all brush, refuse, or unused timber on lands owned or controlled by the United States caused by or left from the construction and maintenance of the lines for which right of way is granted.

REG. 15. The grantee shall pay on demand, by certified check to the order of the Secretary of the Interior, the full value as fixed by the said Secretary for all timber cut, injured, or destroyed on lands owned or controlled by the United States in the construction, maintenance, and operation of the lines for which right of way is granted.

REG. 16. The grantee shall sell and deliver power to the United States and to the State within which are the lands servient to the right of way granted, or any part thereof, and to any or all municipal corporations of such State, when duly requested, at as low a rate as is given to any other purchaser for a like use at the same time and under similar conditions: *Provided*, That the grantee can furnish the same without diminishing the quantity of power sold before such request to any other customer by a binding contract of sale: *Provided further*, That nothing in this clause shall be construed to require the grantee to increase permanent works or install additional generating machinery or construct any transmission line or connection beyond the limits fixed by the statute for the right of way granted.

REG. 17. The grantee shall do everything reasonably possible, both independently and on request of the Secretary of the Interior or other duly authorized officer or agent of the United States, to prevent and suppress fires on or near the right of way granted.

REG. 18. The grantee shall maintain a system of accounting for his entire power business in such form as the Secretary of the Interior may prescribe and shall render annually such reports of the power business as the said Secretary may direct.

REG. 19. The grantee shall save harmless the United States against any liability for damages to life or property arising from the occupancy or use of the right of way granted.

REG. 20. The grantee shall not assign or transfer to any other person or corporation whatsoever the right of way granted, except with approval in writing first obtained from the Secretary of the Interior or other proper officer of the United States and upon terms and conditions prescribed in said written approval by such Secretary or other officer. The assignee or transferee under any such approval shall take and use the right of way subject to all the terms and conditions in these regulations together with the original approved application and grant set forth, and subject to such additional terms and conditions as may be provided by such written approval of the transfer.

REG. 21. In respect to the regulation, by any competent public authority, of the services to be rendered by the grantee or of the prices to be charged therefor, and in respect to any purchase or taking over of the works or business of the grantee or any part thereof by the United States or by any State within which the works are situated or business carried on in whole or in part, or by any municipal corporation of such State, no value whatsoever shall at any time be assigned to or claimed for the right of way granted, nor shall said right of way or grant ever be estimated or considered as property upon which the grantee shall be entitled to earn or receive any return, income, price, or compensation whatsoever.

REG. 22. The grantee, with respect to service rendered and power delivered over the right of way granted, (otherwise than in the performance of contracts upon the execution and performance of which the grant may be expressly conditioned under the provisions of regulation 6 hereof), and with respect to the prices charged and to be charged therefor, will comply with all such just and reasonable regulations as may be imposed by any duly constituted Federal, State, or other governmental authority having jurisdiction in the premises; and the grantee shall never, by reason of or in connection with the right of way granted, or otherwise, have, exercise, or claim any greater or other rights under contracts upon which the grant is so conditioned than could have rightfully been had, exercised, or claimed without such condition: *Provided*, That if, as to any conditions imposed upon the grantee by this paragraph, the regulations prescribed by the Federal Government, its officers or agents, are in conflict with the regulations prescribed by the State or any duly authorized agency thereof, compliance with the Federal regulations shall be deemed and taken to be a fulfillment of the requirements of this paragraph in so far as such conflict extends and no further.

REG. 23. Upon breach by the grantee of any of the terms or conditions set forth in these regulations or in the approved application or in the grant, the United States may have and enforce appropriate remedy therefor by suit for specific performance, injunction, action for damages, or otherwise. And if any such breach shall be continued or repeated after 30 days' notice thereof given in behalf of the United States to the grantee, the right of way granted, together with all rights thereunder and all rental charges and other moneys paid thereon, may be forfeited to the United States by a suit for that purpose in any court of competent jurisdiction.

Under the authority given by the above-quoted provision of the said act of March 4, 1911, the foregoing regulations are, on this 6th day of January, 1913, hereby made and fixed with respect to grants of rights of way for the purposes in said provision set forth, over, across, and upon the public lands and reservations of the United States under the jurisdiction of the Department of the Interior.

WALTER L. FISHER,
Secretary of the Interior.

[Reported, 41 L. D. 532]

REGULATIONS CONCERNING PERMITS FOR RIGHTS OF WAY FOR POWER PURPOSES THROUGH PUBLIC LANDS AND RESERVATIONS (EXCEPT NATIONAL FORESTS)

DEPARTMENT OF THE INTERIOR,
March 1, 1913.[15]

GENERAL STATEMENT

1. The act of February 15, 1901,[16] chapter 372 (31 Stat. 790), entitled "An act relating to rights of way through certain parks, reservations, and other public lands," is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of the said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided, further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

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[15] Amended by regulation of July 19, 1913, p. 1356. See supplemental instructions of Aug. 21, 1929, p. 1364.

[16] This act has been superseded, in part, by the Federal water power act of June 10, 1920 (41 Stat. 1063).

2. This act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forest, and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks in California, for every purpose contemplated by sections 18 to 21 of the act of March 3, 1891 (26 Stat. 1095, 1101), and by acts of January 21, 1895 (28 Stat. 635), May 14, 1896 (29 Stat. 120), and May 11, 1898 (30 Stat. 404), and for other purposes additional thereto, except for tramroads, the provisions relating to tramroads, contained in the act of 1895 and in section 1 of the act of 1898, aforesaid remaining unmodified and not being in any manner extended.

3. Although this act does not expressly repeal any provision of law relating to the granting of permission to use rights of way contained in the acts referred to, yet in view of the general scope and purpose of the act, and of the fact that Congress has, with the exception above noted, embodied therein the main features of the former acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later act should control in so far as it pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly, all applications for permission to use rights of way for the purposes specified in this act must be submitted thereunder. Where, however, any canal or ditch company formed for the purpose of irrigation, any individual, or association of individuals, seeks to acquire a right of way for irrigation canals, ditches, or reservoirs, under said sections of the act of March 3, 1891, and section 2 of the act of May 11, 1898, supra, the application must be submitted in accordance with the regulations issued under said acts.

4. By section 1 of the act of February 1, 1905 (33 Stat. 628), it is provided:

That the Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands.

5. Under this section it has been determined that the Department of Agriculture is invested with jurisdiction to pass upon all applications under the said act of February 15, 1901, for permission to occupy and use lands in national forests.

6. Therefore when it is desired to obtain permission to use a right of way over public lands within a national forest, an application should be prepared in accordance with the regulations issued by the Department of Agriculture and the same submitted to the proper officer of that department, as in these regulations more fully set forth.

7. Any occupancy or use of public lands, reservations, parks, or national forests for the purposes set forth in the statute, except under authority first secured from the proper department, is trespass.

8. The statute does not make a grant in the nature of an easement, but authorizes a mere permission revocable at any time, and it gives no right whatever to take from public lands, reservations, parks, or national forests adjacent to the right of way any material, earth, or stone for construction or other purposes.

9. Permission may be given under this statute for rights of way through unsurveyed as well as surveyed lands.

10. Public lands of the United States chiefly valuable for power purposes are from time to time withdrawn from settlement, location, sale, or entry and reserved for power purposes under the withdrawal act of June 25, 1910 (36 Stat. 847), as amended by act of August 24, 1912 (37 Stat. 497), or under sections 13 and 14 of the omnibus Indian act of June 25, 1910 (36 Stat. 855). Such reservation not only effects retention of the lands in Government ownership, but relieves the eventual permittee from the necessity of dealing with the numerous patentees or claimants that would otherwise succeed to the ownership, and provides for a more permanent right of way than could otherwise be secured from the United States under existing law. On approval of a power project under the following regulations, modification of the withdrawal to allow the issuance of the necessary permit is secured, so that the withdrawal in no way interferes with power development. It is suggested, therefore, that prospective applicants under these regulations furnish to the Director of the Geological Survey, Washington, D. C., at the earliest possible stage of operations, an approximate description by legal subdivisions of the land affected, together with a brief statement of the extent of the power resources involved and a request that a withdrawal be made. Such requests will be given immediate attention to the end that the unreserved lands affected may be withdrawn in so far as they are found to possess value for power purposes.

11. The following regulations govern the issuance of permits under the said act of February 15, 1901, that involve the use of or interference with valuable power resources or that involve rights of way for the development, transmission, or use of power. They are a revision of and supersede regulations on the same subject, approved August 24, 1912, which superseded sections 37 to 45, inclusive, of the "Regulations concerning right of way over public lands and reservations for canals, ditches, and reservoirs, and use of right of way for various purposes," approved June 6, 1908 (36 L. D. 579–583), so far as they relate to permits that involve the use of or interference with valuable power resources or that involve rights of way

for the development, transmission, or use of power. Permits under said act that do not involve the use of or interference with valuable power resources and that do not involve rights of way for the development, transmission, or use of power are issued in accordance with the said sections of the regulations of June 6, 1908.

REGULATIONS

REGULATION 1. Preliminary power permits issued by the Secretary of the Interior allow the occupancy of the public lands and reservations of the United States, (except national forests), and of the Yosemite, Sequoia, and General Grant National Parks, all hereinafter called "Interior Department lands," for the purpose of securing the data required for an application for final permit. Final power permits issued by the Secretary of the Interior allow the occupancy and use of Interior Department lands for the construction, maintenance, and operation of works that involve the use of or interference with valuable power resources or that involve the development, transmission, or use of power. All permits will be issued, extended, renewed, or revoked only by the Secretary of the Interior, hereafter in these regulations called "the Secretary."

REG. 2. Application for preliminary or final power permits for occupancy or use of lands of the United States should be submitted as follows:

For Interior Department lands: To the local land office of the land district in which the lands are situated. If the lands are situated in more than one district, the lands in both districts shall be embraced in one set of application papers, which shall be submitted in any one of such districts at the option of the applicant, who shall submit to the local land office in each of the other districts a print copy of the maps submitted to the local land office of the first district.

For national-forest lands: To the district forester of the district in which the lands are situated, unless otherwise directed by the regulations of the Department of Agriculture.

For lands in part national-forest lands and in part Interior Department lands: In the same manner as for national-forest lands, but the applicant shall also submit to the local land office in the land district in which the Interior Department lands are situated such maps and papers and copies thereof as are required in these regulations.

REG. 3. Priority of consideration of applications for final power permits shall be initiated in the order of filing complete applications whether such applications shall be for preliminary permit as prescribed in regulation 10 or for final permit as prescribed in either regulation 11 or regulation 12. If a preliminary permittee shall file such complete application for final permit before loss of priority initiated by the application for preliminary permit, the priority so initiated shall be maintained by the application for final permit and be effective as of the date of the application for the preliminary permit. Priority shall be maintained, however, only in so far as the projects shown in the application for final permit are within the approximate limits of diversion and discharge as shown in the application for the preliminary permit. Priority initiated or maintained by an application for final permit shall be lost if the applicant fails to make the payment required and to return a duly executed agreement, as prescribed in regulation 14 or in regulation 15, within 90 days from a date fixed in the letter transmitting such agreement to him, unless a longer time is allowed by written authority of the Secretary. Priority initiated by an application for preliminary permit shall be lost (1) if the initial payment is not made within 60 days of demand therefor, or (2) if the application for final permit is not filed within the time required in the preliminary permit. Priority initiated or maintained by an application for a permit shall be lost if the permit is revoked. No other application, either preliminary or final, for a like use covering in whole or in part the same or adjacent lands, will be accepted from the permittee whose priority is lost until the expiration of one year thereafter; and this restriction shall extend to transferees of the permittee and, if the permittee is a corporation, to reincorporations representing the same or associated interests, whenever in the judgment of the Secretary a transfer or reincorporation has been effected for the purpose or with the result of escaping the restriction of this regulation, it being the intent of such restriction to leave open to other applicants for a period of one year power sites upon which priorities have lapsed as provided in this regulation.

REG. 4. Final power permits will be issued only in case it appears that the proposed development will be in general accord with the most beneficial utilization of the resources involved and consistent with the pubic interest. No final power permit will be issued if the works to be constructed thereunder would in any way be incompatible with works operated or constructed or to be constructed under an existing final power permit. No final power permit will be issued for the construction of works within an area covered by a prior preliminary permit until after the filing of final application or the loss of priority by the prior preliminary permittee. Applications for final power permits involving in whole or in part the same lands will be examined in order of their priority, but before the issuance of final permit consideration may be given, in the discretion of the Secretary, to the financial ability and business connections and affiliations of the applicants. Successive preliminary permits may be issued covering the same power site, but in each successive preliminary permit it shall be specified that such permit is subordinate to all outstanding prior permits and shall not adversely affect any rights thereunder.

REG. 5. The applicant must file as a part of his application the evidence of initiation of water appropriation in these regulations hereafter required. Thereafter no protest against the issuance of a permit, if based upon alleged lack of water rights, will be considered; nor, in general, will any allegation that the time of beginning or completion of construction has been or is delayed by litigation over water rights be accepted as a sufficient reason for granting any extensions of time. Wherever the approval or permission of one or more State agencies is required by the State law as a condition precedent to the applicant's right to construct or operate or to take or use water in the operation of the works described in any application for a final power permit, duly certified evidence, in duplicate, of the approval or permission so required must be filed before issuance of such permit.

REG. 6.[17] Unless sooner revoked by the Secretary, a final power permit shall terminate at the expiration of 50 years from the date of the permit. If, however, at any time not less than 2 nor more than 12 years prior to the termination of the permit, the permittee shall formally notify the Secretary that he desires a new permit to occupy and use such lands as are occupied and used under the existing permit, and will comply with all then existing laws and regulations governing the occupancy and use of lands of the United States for power purposes, the existing permit will be considered as an application for such new permit.

REG. 7. The following terms, wherever used in these regulations, shall have the meaning hereby in this regulation assigned to them, respectively, viz:

"Municipal purposes" means and includes all purposes within municipal powers as defined by the charter of the municipal corporation, where any such purpose is directly pursued by the municipal corporation itself with the primary object of promoting the security, health, good government, or general convenience of its inhabitants.

"Power business" means the entire business of the applicant or permittee in the generation, distribution, and delivery of power by means of any one power system, together with all works and tangible property involved therein, including freeholds and leaseholds in real property.

"Power system" means all interconnected plants and works for the generation, distribution, and delivery of power.

"Power project" means a complete unit of power development, consisting of a power house, conduit or conduits conducting water thereto, all storage or diverting or fore-bay reservoirs used in connection therewith, the transmission line delivering power therefrom, any other miscellaneous structures used in connection with said unit or any part thereof, and all lands the occupancy and use of which are necessary or appropriate in the development of power in said unit.

"Project works" means the physical structures of a power project.

"Construction of the project works" means the actual construction of dams, water conduits, power houses, transmission lines, or some permanent structure necessary to the operation of the complete power project, and does not include surveys or the building of roads and trails or the clearing of reservoir sites or other lands to be occupied, or the performance of any work preliminary to the actual construction of the permanent project works.

"Operation period" means the period covered by final permit subsequent to the actual beginning of operation.

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[17] See amendment, p. 1356.

"Survey-construction period" means the period covered by preliminary and final permits prior to the operation period.

"Nominal stream flow" means the sum of (*a*) the average of the values estimated for the mean natural flow for the two-month, (calendar), minimum-flow period in each successive five-year cycle or major fraction thereof, and (*b*) the increase in such average due to artificial means other than the project works.

"Project storage flow" means the estimated increase in nominal stream flow made practicable by the project works.

"Available stream flow" means the sum of nominal stream flow and project storage flow.

"Load factor" means the ratio of average power output to maximum power output.

"Total capacity of the power site" means the power estimated to be available for transmission, and is determined as the continued product of (1) the factor 0.08[18]; (2) the average effective head, in feet; (3) the available stream flow at the intake, (in second-feet and in amount not to exceed the maximum hydraulic capacity of the project works); and (4) a factor, not less than the average load factor of the power system, representing the degree of practicable utilization of the available stream flow, and based on the extent of practicable fore-bay storage and the load factor of the power system.

"Net capacity of the power site" means the capacity on which the calculation of the compensation hereinafter required to be paid is based, and is determined by making a deduction from the total capacity of the power site which, in per cent, shall be the product of the square of the distance of primary transmission in miles and the factor 0.001, but in no case shall such deduction exceed 25 per cent.

Reg. 8.[19] The occupancy and use of Interior Department lands (otherwise than by transmission lines) under a preliminary or final power permit for power sites of more than 100 horsepower total capacity (except permits exclusively for municipal purposes, for irrigation, or for temporary construction of project works as in this regulation hereafter specified) will be conditioned on the payment in advance for each calendar year of compensation calculated from the "net capacity of the power site," as defined in regulation 7, at not less than the following rates per horsepower per year:

For the unexpired portion of the calendar year and for the first full calendar year of the survey-construction period, and similarly for the operation period	$0.01
For the second full calendar year of each of said periods	.02
For the third year	.03
For the fourth year	.04
For the fifth year	.05
For the sixth year	.06
For the seventh year	.07
For the eighth year	.08
For the ninth year	.09
For the tenth and each succeeding year	.10

The rates per horsepower per year will be 10 times such minimum rates, however, unless good cause for fixing other rates appears.

The occupancy and use of Interior Department lands by transmission lines will be conditioned on the payment in advance for each calendar year of compensation to be fixed by the Secretary and specified in each permit according to the circumstances in each case.

The compensation on account of a preliminary power permit will be calculated from the net capacity of the power site as estimated by the Secretary at the time of granting such permit. The compensation on account of a final power permit will be calculated from the net capacity of the power site as estimated by the Secretary at the time of granting said final permit, provided that said estimated net capacity may be adjusted by the Secretary annually to provide for changes in length of primary transmission, for increase or decrease, by storage or otherwise, of available stream flow to an amount of 10 per cent or more, or for increase or decrease of 10 per cent or more in average effective head, or in degree of practicable utilization.

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[18] The factor 0.08 represents the horsepower at 70 per cent efficiency of a second-foot of water falling through a head of 1 foot.

[19] See amendment, p. 1356.

The first payment by every permittee shall be the compensation for a full year, but any excess of said payment over the pro rata compensation for the unexpired portion of the calendar year in which the permit is issued will be credited to the permittee as a part of his payment for the first full calendar year.

All payments made for the survey-construction period will be credited to the permittee for the cancellation of charges as they become due in the operation period.

No compensation will be required for the occupancy and use of Interior Department lands under a preliminary or final power permit authorizing such occupancy and use exclusively for municipal purposes, for irrigation, or for the temporary development of power to be used in the construction of permanent project works under permit issued to the same permittee. All free permits issued under this paragraph will be subject to such special conditions as the Secretary may deem necessary in each case to fully protect the consumers of power for such municipal purposes and irrigation.

If all or any part of the amounts due for compensation as required in the preliminary permit shall, after due notice has been given, be in arrears for 60 days, then and thereupon the preliminary permit shall terminate and be void and will be formally revoked by the Secretary. If all or any part of the amounts due for compensation, as required in the final permit, shall, after due notice has been given, be in arrears for six months, then and thereupon the final permit shall terminate and be void and will be formally revoked by the Secretary.

At any time not less than 10 years after the issuance of final permit, or after the last revision of rates per horsepower per year thereunder, the Secretary may review such rates and impose such new rates per horsepower per year as he may decide to be reasonable and proper: *Provided*, That the new rates shall not be so great as to result in reducing the margin of income from the project over estimated and proper expenses, (including reasonable allowance for repairs and renewals), to an amount which, in view of all the circumstances, (including fair promotion costs and working capital), and risks of the enterprise, (including obsolescence), is unreasonably small; but the burden of proving such unreasonableness shall rest upon the permittee.

The decision of the Secretary shall be final as to all matters of fact upon which the calculation of the capacities or compensation depends.

Reg. 9. All applications for power permits, whether preliminary or final, to occupy and use Interior Department lands under these regulations shall, if the applicant be an individual, be accompanied by an affidavit by the applicant that he is a citizen of the United States. If he is not a native-born citizen he must submit the usual proofs of naturalization. If the applicant is an association of citizens, each member must make affidavit of citizenship, and a complete list of the members must be given in an affidavit by one of them. Associations must, in addition, submit their articles of association; if there be none, the fact must be stated over the signature of each member of the association. Applications by individuals or associations must also be accompanied by the information called for in paragraph (G) of this regulation.

If the applicant is an incorporated company, its application must be accompanied by the papers below in this regulation specified:

(A) A copy of its articles of incorporation, duly certified by the proper officers of the company under its corporate seal or by the secretary of the State where organized.

(B) A copy of the State law under which the company was organized (if it was organized under State law), with certificate of the governor or secretary of the State, under seal, that the same was the law at the date of incorporation. (See par. (H) of this regulation.)

(C) If the State law directs that the articles of incorporation or other papers connected with the organization be filed with any State officer, there must be submitted the certificate of such officer that the same have been filed according to law, and giving the date of the filing thereof.

(D) When a company is operating in a State other than that in which it is incorporated, it must submit the certificate of the proper officer of the State that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

(E) An official statement, by the proper officer, under the seal of the company, that the organization has been completed, that the company is fully authorized to proceed with construction according to the existing law of the State in which it is incorporated, and that the copy of the articles filed is true and correct.

(F) A true list, signed by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the items by this regulation required.

(G) A copy of the State laws governing water rights, with the certificate of the governor or secretary of the State that the same is the existing law.

(H) If certified copies of the existing laws regarding corporations and irrigation, and of new laws as passed from time to time, be forwarded to the General Land Office by the governor or secretary of the State, the applicant may file, in lieu of the requirements of paragraphs (B) and (G) of this regulation, a certificate of the governor or secretary of state, under seal, that no change has been made since a given date, not later than that of the laws last forwarded.

Reg. 10. All applications for preliminary permits to occupy and use Interior Department lands for the purpose of securing the data required for an application for final permit for power projects of more than 100 horsepower total capacity shall consist of the following items, (in addition to those specified in regulation 9), each of which shall be dated and signed by the applicant:

(I) An application in quadruplicate, on Form 3.

(J) A map, in duplicate, on tracing linen, and two print copies, cut to a uniform size and not larger than 28 by 40 inches and not smaller than 24 by 36 inches, with scale so selected as to show upon a single map the power project or projects applied for, showing the approximate location of the dams, reservoirs, conduits, power houses, and other project works. The map shall show: All lines of public land subdivisions by official survey and the protractions on unsurveyed lands of section and township lines, such protractions in any national forest conforming to the diagram accompanying the proclamation establishing the boundaries of such national forest; for each reservoir site, the distance and bearing of one extremity of the dam from the nearest existing corner of the public survey and approximately the position of the maximum-flow line; and for each water-conduit line, the distance and bearing of each terminus from the nearest existing corner of the public survey and the approximate location of the conduit. If on unsurveyed land, the distances and bearings may be taken from a permanent mark on some natural object or permanent monument that can be readily found and recognized.

(K) Estimates in quadruplicate for each power project of (1) the total average effective head to be utilized, and the per cent thereof to be obtained from dam and from water conduit, respectively; (2) the stream flow, and the per cent thereof to be made available from storage by the project works and by other works, respectively; (3) the area to be flooded by backwater from the diversion dam; (4) the length of the proposed water conduit (from intake to tailrace outlet); (5) the area and available capacity of each proposed storage reservoir; (6) the probable load factor of the power system; and (7) the distance, in miles, of proposed primary transmission.

These estimates should be accompanied by complete statements in detail of all data on which they are based, including stream measurements, rainfall, stream flow and evaporation records, drainage areas, probable points of delivery of power, and any other pertinent information.

(L) A duly certified copy of such notice or application, if any, as is required to be posted or filed, or both, to initiate the appropriation of water under the local laws. This notice or application should provide for use, by the applicant for a power permit or by his predecessors, of sufficient water for the full operation of the project works.

Application must be made for the occupancy and use of such lands for a definite, limited period only, which period will allow a reasonable time for the preparation and filing of the final application as prescribed in regulation 11. The time prescribed in the preliminary permit may, upon application, be extended by the Secretary if the completion of the final application has been prevented by unusual climatic conditions that could not reasonably have been foreseen or by some special or peculiar cause beyond the control of the permittee.

An application for a preliminary power permit shall not be complete until every map or paper required by regulation 9 and by this regulation shall have been filed in the form prescribed.

REG. 11. All applications for final permits to occupy and use Interior Department lands for power projects of more than 100 horsepower total capacity shall consist of the following items (in addition to those specified in regulation 9):

(I) An application in quadruplicate, on Form 5.

(J) Maps of location, in duplicate, on tracing linen, and plans of structures on tracing linen, with two print copies of each map and plan cut to uniform size not larger than 28 by 40 inches and not smaller than 24 by 36 inches with graphical scale not less than 6 inches in length drawn thereon. Separate sheets, numbered consecutively, shall be used for maps whenever the whole survey can not be shown upon a single sheet, and each sheet shall contain a small diagram showing the entire map and indicating the portions shown on each sheet. Each separate sheet of maps and plans shall contain an affidavit of the applicant's engineer and a certificate of the applicant in form prescribed by the Secretary. (See Form 6.) The maps shall show reference lines that can at all times readily be retraced to initial points of survey, to termini of water conduits, to termini of transmission lines (when within 2 miles of Interior Department lands, measured along the proposed right of way), and to intersections of surveys with boundaries of national forests and other reservations of the United States; all lines of public land subdivisions by official survey and the protractions on unsurveyed lands of section and township lines, such protractions in any national forest conforming to the diagram accompanying the proclamation establishing the boundaries of such national forest; and the status as to ownership of all lands of the power project or projects, designating separately lands patented, lands of the United States entered or otherwise embraced in any unperfected claim under the public land laws, unreserved lands of the United States, and, separately for each reservation, lands included within national forests and other reservations of the United States. Elevations and contour lines shall be based on United States Geological Survey datum whenever available.

(1) The following maps and plans shall be submitted for each reservoir that will be a part of the power project or projects applied for: (*a*) A contour map of each reservoir site, dam, and dam site on a scale of not more than 400 feet to the inch, with a contour interval of not more than 10 feet. The contour map for each reservoir site shall show the high-water flow line and, in case the reservoir is to be used in whole or in part for diversion purposes, the flow line fixed by the estimated average effective head, and also a table of areas and capacities for each flow line and each contour line. (*b*) A cross section of each dam site along the center line of the proposed dam, with a graphical log properly located thereon of each boring, test pit, or other exploration, and a brief statement of the character and dip of underlying material. (*c*) Plans, elevations, and cross sections of the dams, showing spillways, sluiceways, or sluice pipes, and other outlet works; and also a statement of the volume of the dam, the character of the materials used, and the type of construction.

(2) The following maps and plans shall be submitted for the entire length of each water conduit, from intake to tailrace outlet, that will be a part of the power project or projects applied for: (*a*) A contour map of the entire water-conduit location, except pipe lines and tunnels, on a scale of not more than 400 feet to the inch, with contour interval of not more than 10 feet and a profile of the pipe lines and tunnels. The contours shall cover either an area of 100 feet in width on each side of the center line of the water conduit or a difference in elevation of at least 25 feet above and below the grade line of the conduit. This map shall show the transit line of the survey and the center line of the proposed final location of the water conduit, including curves between tangents, and the distance from the nearest section or quarter-section corner of the intersection of the transit line with section lines. This map shall also show what sections of the water conduit will be in flume, ditch, tunnel, pipe, etc., and the grade of each section. (*b*) Plans, elevations, and cross sections of each type of water conduit, showing material, dimensions, grades, flow line, and capacity and plans and elevations of intake works and fore bays.

(3) A contour map on a scale of not more than 50 feet to the inch, with a contour interval of not more than 5 feet, showing the proposed location of the power house, other buildings, etc., shall be filed for each power-house site that will be a part of the power project or projects applied for. This map shall also state the proposed type and estimated number and rated capacity of the water wheels and generators to be used.

(4) A map of the survey of the proposed final location of the center line of the transmission line, on a scale of not more than 1,000 feet to the inch, shall

be filed for such portion of the transmission lines as are located upon Interior Department lands.

(5) A general map of the entire power project or projects applied for (except transmission lines) on such a scale that the entire survey may be shown upon a single sheet; also a similar map showing the entire primary transmission system.

(K) Copies of field notes in triplicate of the entire final location survey of water conduits and transmission lines and the exterior boundaries of power-house and reservoir sites, bearing an affidavit of the applicant's engineer and a certificate of the applicant in form prescribed by the Secretary. (See Form 7.)

(L) Estimates in quadruplicate for each power project of (1) the total average effective head to be utilized and the per cent thereof to be obtained from dam and from water conduit, respectively; (2) the stream flow and the per cent thereof made available from storage by the project works and by other works, respectively; (3) the area to be flooded by the dam below the flow line fixed by the estimated average effective head; (4) the length of the proposed water conduit (from intake to tailrace outlet); (5) the area and available capacity of each proposed storage reservoir; (6) the available storage capacity of fore bay (or diversion pond); (7) the probable load factor of the power system; and (8) the distance, in miles, of primary transmission.

These estimates should bear an affidavit of the applicant's engineer and a certificate of the applicant (Form 8) and should be accompanied by complete statements in detail of all data on which they are based, including stream measurements, rainfall, stream flow, and evaporation records, drainage areas, total static head and losses in head, probable maximum, minimum, and average power output, load curves of the power system, efficiencies of machinery, probable points of delivery of power, and all other pertinent information.

(M) Such evidence of water appropriation as is specified in regulation 10 (L). If such evidence has been filed with an application for a preliminary permit, only such additional evidence will be required as will cover appropriations or transfers subsequent to the date of the evidence filed with the application for preliminary permit. A certified statement from the proper State agency setting forth the extent and validity of the applicant's water right, if consistent with the State law, must also be filed together with the evidence required by regulation 5, or a showing of cause why such evidence can not reasonably be presented.

(N) A detailed statement in quadruplicate by the applicant of the time desired for making financial arrangements, for completing preliminary construction, and for beginning "construction of the project works," as defined in regulation 7.

Maps and field notes shall designate by termini and length each water-conduit and transmission line, and by initial point and area each reservoir and power-house site. The termini of water conduits, the termini of transmission lines, and the intersections with boundaries of reservations of the United States and with surveyed township and section lines, and the initial point of survey of power-house sites shall be fixed by reference by course and distance to the nearest existing corner of the public survey; and the initial point of the survey of reservoir sites shall be fixed by reference by course and distance to the nearest existing corner outside of the reservoir by a line or lines not crossing an area that will be covered with water when the reservoir is in use. When any such terminus, intersection, or initial point is upon unsurveyed land, it shall be connected by traverse with an established corner of the public survey, and the distance from the terminus, intersection, or initial point to the corner shall be computed and noted on the map and in the affidavit of the applicant's engineer. When the nearest established corner of the public survey is more than 2 miles distant, this connection may be with a permanent mark on a natural object or a permanent monument which can be readily found and recognized. The field notes shall give an accurate description of the natural object or monument and full data of traverse as required above.

Each separate original map, plan, set of field notes, estimates, and data, evidence of water appropriation, articles of incorporation, and evidence of right to operate within any State shall be plainly marked "Exhibit A," "Exhibit B," etc., respectively, and referred to by such designation in the application. Maps and plans shall in addition be described in the application by their titles as "Exhibit A, map of location of," etc., "Exhibit B, plan of," etc. Duplicate and triplicate copies, etc., should be marked "Exhibit A, duplicate," "Exhibit A, triplicate," etc. Maps should be rolled for mailing and should not be folded.

An application for final permit shall not be complete until every map or paper required by this regulation has been filed in the form prescribed.

REG. 12. No applications will be received for preliminary permits for the occupancy and use of Interior Department lands for power projects of 100 horsepower total capacity or less. Applications for final permits for such occupancy and use shall be in writing, dated and signed by the applicant, and, in addition to the items specified in regulation 9, shall be accompanied by:

(J) A map in quadruplicate showing the location of dams, reservoirs, conduits, power houses, and transmission lines or other works.

(K) Field notes of the survey in quadruplicate.

(L) A statement in quadruplicate of the amount of water to be diverted for use, the maximum capacity of the diversion works, and the total average static and effective heads to be utilized.

(M) Such showing as is specified in regulation 11 (M).

The map shall consist of duplicate originals on tracing linen and two print copies, and shall not be larger than 28 by 40 inches or smaller than 24 by 36 inches, and may be on any convenient scale. The map shall show all lines of public-land subdivisions by official survey and the protractions on unsurveyed lands of section and township lines, such protractions in any national forest conforming to the diagram accompanying the proclamation establishing the boundaries of such national forest; and the status as to ownership of all lands in the power project, designating separately lands patented, lands of the United States entered or otherwise embraced in any unperfected claim under the public land laws, unreserved lands of the United States, and, separately for each reservation, lands included in national forests and other reservations of the United States. The map shall also show: For each reservoir site, the distance and bearing of the initial point of survey from the nearest existing corner of the public survey, the location of the maximum-flow line, and the area and available storage capacity of the reservoir; for each water-conduit line, the distance and bearing of each terminus from the nearest corner of the public survey, the location of the center line of the conduit, and its length; and for each power-house site, the distance and bearing of the initial point of survey from the nearest corner of the public survey, the location of the exterior boundaries of the site, and the area. If on unsurveyed land, the distances and bearings may, if the nearest existing corner of the public survey is more than 2 miles distant, be taken from a permanent mark on some natural object or permanent monument that can be readily found and recognized.

REG. 13. Before a final power permit will be issued for a power project of 100 horsepower total capacity or less, the permittee shall execute or file an agreement which, upon its approval in writing by the Secretary, shall constitute and express the conditions of the permit. Such agreement shall expressly bind the applicant to such of the items enumerated in regulation 14 and such other conditions as may be required by the Secretary.

REG. 14. Before a final power permit will be issued for a power project of more than 100 horsepower total capacity, the permittee shall execute and file an agreement which, upon its approval in writing by the Secretary, shall constitute and express the conditions of the permit. Such agreement shall expressly bind the applicant—

(A) To construct the project works on the location shown upon and in accordance with the maps and plans submitted with the final application for permit, and to make no material deviation from said location unless and until maps and plans showing such deviation shall have been submitted and approved. (See reg. 15.)

(B) To begin the construction of the project works, or the several parts thereof, within a specified period or periods from the date of execution of the permit, and thereafter to diligently and continuously prosecute such construction unless temporarily interrupted by climatic conditions or by some special or peculiar cause beyond the control of the permittee.

(C) To complete the construction and begin the operation of the project works, or the several parts thereof, within a specified period or periods from the date of execution of the permit.

(D) To operate the project works continuously for the development, transmission, and use of power, unless upon a full and satisfactory showing that such operation is prevented by unavoidable accidents or contingencies this requirement is temporarily waived by the written consent of the Secretary.

(E) To pay annually, in advance, such amounts as may be fixed and required by the Secretary under these regulations. (Reg. 8.)

(F) On demand of the Secretary to install at such places and maintain in good operating condition in such manner as shall be approved by the Secretary accurate meters, measuring weirs, gages, or other devices approved by the Secretary and adequate for the determination of the amount of electric energy generated by the project works and of the flow of the stream or streams from which the water is to be diverted for the operation of the project works and of the amount of water used in the operation of the project works and of the amounts of water held in and drawn from storage; to keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Secretary; and to make a return during January of each year, under oath, of such of the records of measurements for the year ended on December 31, preceding, made by or in the possession of the permittee, as may be required by the Secretary.

(G) That the books and records of the permittee shall be open at all times to the inspection and examination of the Secretary, or other officer or agent of the United States duly authorized to make such inspection and examination.

(H) On demand of the Secretary to install a system of accounting for the entire power business in such form as the Secretary may prescribe, which system as far as is practicable will be uniform for all permittees, and to render annually such reports of the power business as the Secretary may direct: *Provided, however*, That if the laws of the State in which the power business or any part thereof is transacted require periodical reports from public utility corporations under a uniform system of accounting, copies of such reports so made will be accepted as fulfilling the requirements of this clause.

(I) To protect all Government and other telephone, telegraph, and power transmission lines at crossings of and at all places of proximity to the permittee's transmission line in a workmanlike manner according to the usual standards of safety for construction, operation, and maintenance in such cases, and to maintain transmission lines in such manner as not to menace life or property.

(J) To clear and keep clear the Interior Department lands along the transmission line for such width and in such manner as the officer of the United States having supervision of such lands may direct.

(K) To dispose of all brush, refuse, or unused timber on Interior Department lands resulting from the construction and maintenance of the project works to the satisfaction of the officer last aforesaid.

(L) To build and repair such roads and trails as may be destroyed or injured by construction work or flooding under the permit, and to build and maintain necessary and suitable crossings for all roads and trails that intersect the water conduit constructed, maintained, or operated under the permit.

(M) To do everything reasonably within the power of the permittee both independently and on request of the Secretary or other duly authorized officer or agent of the United States to prevent and suppress fires on or near the lands to be occupied under the permit.

(N) To pay the full value as fixed by the Secretary for all timber cut, injured, or destroyed on Interior Department lands in the construction, maintenance, and operation of the project works.

(O) To pay the United States full value for all damage to the lands or other property of the United States resulting from the breaking of or the overflowing, leaking, or seeping of water from the project works, and for all other damage to the lands or other property of the United States caused by the neglect of the permittee or of the employees, contractors, or employees of the contractors of the permittee.

(P) To indemnify the United States against any liability for damages to life or property arising from the occupancy or use of Interior Department lands by the permittee.

(Q) To sell power to the United States, when requested, at as low a price as is given to any other purchaser for a like use at the same time, and under similar conditions, if the permittee can furnish the same to the United States without diminishing the quantity of power sold before such request to any other customer by a binding contract of sale: *Provided*, That nothing in this clause shall be construed to require the permittee to increase permanent works or install additional generating machinery.

(R) To abide by such reasonable regulation of the service rendered and to be rendered by the permittee to consumers of power furnished or transmitted by the permittee, and of the prices to be paid therefor as may from time to time be prescribed by the State or any designated agency of the State in which the service is rendered: *Provided*, That for the purposes of this paragraph any such regulation shall be deemed to be suspended pending proceedings in the courts of such State, or in the Supreme Court of the United States on appeal from said State courts where such proceedings are in the nature of an appeal taken direct from the officer, commission, or board prescribing such regulation to said State courts.

(S) Upon demand in writing by the Secretary to surrender the permit to the United States or to transfer the same to such State or municipal corporation as he may designate, and to give, grant, bargain, sell, and transfer with the permit all works, equipment, structures, and property then owned or held by the permittee on lands of the United States occupied or used under the permit, and then valuable or serviceable in the generation, transmission, and distribution of power: *Provided*, (1) That such surrender or transfer shall be demanded only in case the United States or the transferee shall have first acquired such other works, equipment, structures, property and rights of the permittee as are dependent in whole or in essential part for their usefulness upon the continuance of the permit; (2) that such surrender or transfer shall be on condition precedent that the United States shall pay or the transferee shall first pay to the permittee the reasonable value of all such works, equipment, structures, and property to be surrendered or transferred; (3) that such reasonable value shall not include any sum for any permit, right, franchise, or property granted by any public authority in excess of the sum paid to such public authority as a purchase price therefor; and (4) that such reasonable value shall be determined by mutual agreement of the parties in interest, and in case they can not agree, by the Secretary under a rule, which, except as modified by the requirements of this paragraph, shall be the then existing rule of valuation for power properties in condemnation proceedings in the State in which the properties to be surrendered or transferred are located. But nothing herein shall prevent the United States or any State or municipal corporation from acquiring by any other lawful means the permit or the works, equipment, structures, or property then owned or held by the permittee on lands of the United States occupied or used under the permit.

(T) That in respect to the regulation by any competent public authority of the service to be rendered by the permittee or the price to be charged therefor, and in respect to any purchase or taking over of the properties or business of the permittee or any part thereof by the United States, or by any State within which the works are situated or business carried on in whole, or in part, or by any municipal corporation in such State, no value whatsoever shall at any time be assigned to or claimed for the permit or for the occupancy or use of Interior Department lands thereunder, nor shall such permit or such occupancy and use ever be estimated or considered as property upon which the permittee shall be entitled to earn or receive any return, income, price, or compensation whatsoever.

(U) That the works to be constructed, maintained, and operated under the permit will not be owned, leased, trusteed, possessed, or controlled by any device or in any manner so that they form part of or in any way effect any combination in the form of an unlawful trust, or form the subject of any unlawful contract or conspiracy to limit the output of electric energy, or in restraint of trade with foreign nations or between two or more States, or within any one State in the generation, sale, or distribution of electric energy.

(V) That any approval of any alteration or amendment, or of any map or plan, or of any extension of time shall affect only the portions specifically covered by such approval; and that no approval of any such alteration, amendment, or extension shall operate to alter or amend, or in any way whatsoever be a waiver of any other part, condition, or provision of the permit.

(W) To perform such other specified conditions with respect to the occupancy and use of lands within any of said parks or any military, Indian, or other reservation as may be found by the chief officer of the department under whose supervision such park or reservation falls to be necessary as conditions precedent to the issuance of the permit in order to render the same compatible with the public interest.

REG. 15. During the progress of construction amendments to maps of location or plans of structures will be required from the permittee if there is a material deviation from the maps or plans as originally filed, but no amendment will be allowed that is incompatible with the occupancy and use of lands under existing permits or pending applications. Any approval of an amendment of a map or plan or of any extension of time shall be in the form of a supplemental agreement and permit so drawn as to become a part of the original agreement and permit and a substitute for the clauses amended. Any approval of any amendment of any map or plan shall apply only to the portions specifically covered by such approval, and no approval of any such amendment shall operate to amend or be in any way a waiver of any other part, condition, or provision of the permit.

If, after the completion of the project works, there are any deviations in location from those shown upon the original map or approved amendments thereof, additional maps prepared in the manner prescribed for original maps of location will be required to be filed within six months after the completion of the project works, showing the extent of such deviations and final locations of such project works. Also upon the completion of the project works detailed working plans will be required of the works as constructed, except such parts as have been constructed in compliance with plans originally filed or approved amendments thereof. Such new or additional plans may be originals on tracing linen or Van Dyke negatives of the permittee's own working plans. The plans of conduits, dams, and appurtenant structures must be complete; of power houses, only general layout plans are required.

Reg. 16. An extension of the periods stipulated in the permit for beginning or completing construction and for beginning operation, will be granted only by the written approval of the Secretary after a showing by the permittee satisfactory to the Secretary that the beginning or completion of construction and beginning of operation has been prevented by engineering difficulties that could not reasonably have been foreseen, or by other special and peculiar causes beyond the control of the permittee.

Reg. 17. A final permit may be transferred to a new permittee only (1) by a court of competent jurisdiction under a decree of foreclosure to enforce a mortgage or deed of trust that shall have been given in good faith to secure capital for the power business as defined in regulation 7, embracing the works constructed or to be constructed under such permit, and without any intent to evade the restrictions upon transfers in this regulation hereafter set forth; or (2) under the following conditions: The proposed transferee shall file with the Commissioner of the General Land Office, Washington, D. C., the decree, execution of judgment, will, proposed contract of sale, or other written instrument upon which the proposed transfer is based, or a properly certified copy thereof, also an application by the proposed transferee in the form of an agreement binding the proposed transferee to the performance of such new and additional conditions expressed therein as the Secretary may deem necessary; and thereupon the Secretary may, in his discretion, approve in writing the proposed transfer, and after such approval the transferee shall succeed to all the rights and obligations of the permittee, subject, however, to such new and additional conditions as shall have been embodied in such agreement and so approved.

Reg. 18. If any person shall make a false engineer's affidavit under these regulations, the secretary may order that no map, field notes, plan, or estimate made by such person shall be received or filed while the order is in force. If any person or corporation, for himself or itself, or as the attorney, agent, or employee of another, shall offer or file any map, field notes, plan, or estimate bearing a false engineer's affidavit, knowing the same to be false, the secretary may order that no application for a power permit shall be filed by or received from the person or corporation so offending, either in his or its own behalf or as attorney, agent, or employee of another, and that no power permit shall be issued to such person or corporation while the order is in force.

Reg. 19. Violation by a final permittee of any of the provisions of these regulations, or of any of the conditions of a permit issued to him thereunder, shall be sufficient ground for revocation of such permit; but attention is called to the statute under which these regulations are issued, which provides:

"That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or by his successor in his discretion."

No permit will be deemed to be revoked except on the issuance by the Secretary of a specific order of revocation. Change of jurisdiction over lands from one executive department to another will not revoke but will change the administrative jurisdiction over a permit for the occupancy and use of such lands. The final disposal by the United States of any tract traversed by a right of way permitted under this act shall not be construed to be a revocation of such permission in whole or in part, but such final disposal shall be deemed and taken to be subject to such right of way until such permission shall have been specifically revoked in accordance with the provisions of said act.

Reg. 20. Any power project under permit, or any part thereof, whether constructed or unconstructed, may be abandoned by the permittee upon the written approval of the Secretary after a finding by the Secretary that such abandonment will not tend to prevent the subsequent development of such project or part thereof so abandoned, and after the fulfillment by the permittee of all the obligations under the permit, in respect to payment or otherwise, existing at the time of such approval. Upon such abandonment, after such approval thereof and fulfillment of existing obligations, so much of the agreement and permit as relates to the abandoned project or part of a project will be formally revoked by the Secretary.

Reg. 21. When an original application for a preliminary or final permit for the use of Interior Department lands only is submitted to a local land office, notations will be made on the tract records of that office as to the fact of such application with respect to each tract affected, giving the serial number, the date of filing, the name of the applicant, and the character of the application or the act under which it is made. In addition to the regular filing stamp imprint on the accompanying papers the register will note on the original map, over his original signature, the serial number, date of filing, and a certificate that lands of the United States are affected indicating the mark or markings by which they are identified on the map. All the application papers will then be transmitted promptly to the General Land Office with report that the required notations have been made on the records of the local land office. When the application affects lands in more than one district, the register of the local land office to which is submitted only a print copy of the map, will make notations and transmit the print copy to the General Land Office in like manner.

If no land of the United States in a district is involved in the application, the officers of the local land office in that district will reject it, allowing the usual right of appeal.

During the pendency of an application for a permit, the local land officers will accept no filing with respect to any of the lands affected thereby except other applications for permits as provided in these regulations; but no valid right will be initiated by an applicant unless a permit is issued to him and said right shall then date from the completion of the application papers.

Upon receipt of the application papers at the General Land Office they will be registered and the pendency of the application will be noted on the tract records of that office in the manner hereinbefore specified for the local land offices. The General Land Office will examine the application and determine whether it is complete with respect to the requirements of that office; and will call upon the applicant through the local land office to supply any deficiency. Thereupon that office will promptly transmit the entire record to the Director of the Geological Survey, stating the fact of such completion and the date thereof as determined by the receipt at the local land office of the last paper required to be filed.

Upon receipt of the application for permit at the Geological Survey, that office will promptly call upon other offices for such reports and recommendations, in triplicate, with respect to the status of the lands, interference with matters under the jurisdiction of such offices, and conditions precedent to the issuance of the permit, as the nature of the case may require; and will determine whether the application papers are complete with reference to the requirements of the Geological Survey, and will call upon the applicant directly to supply any deficiency. When the application is found by the Geological Survey to be thus complete, the fact of such completion and the date thereof as determined by the receipt at the Geological Survey of the last paper required (or in case the application is thus complete when received by the Geological Survey, the date as specified by the General Land Office) will be noted on the records of the Geological Survey; and said date will be taken as the date of initiation of priority as defined in regulation 3 and as the date of initiation of valid rights of the applicant as against other claimants, and will be so specified in the permit, if issued.

When an application for the use of national forest and Interior Department lands is submitted, the same procedure will be followed as in other cases, except that no draft of permit will be prepared until the Geological Survey receives notice from the Department of Agriculture of the fact and date of the completion of the application in that department. The date so notified will be taken as the date of initiation of priority as defined in regulation 3, but the initiation of valid rights of the applicant as against other claimants on Interior Department lands will date from the completion of the application in the Interior Department, and the respective dates will be so specified in the permit, if issued. In case the application papers are found to be incomplete by the General Land Office or the Geological Survey, the office so finding will mail to the Department of Agriculture a copy of the letter calling upon the applicant to supply the deficiency; and the draft of the permit will be prepared by the Geological Survey only after consultation with the Department of Agriculture.

The recommendation of the Geological Survey, together with the two tracings of all maps of location, two sets of field notes, and two sets of the formal application papers required by regulation 9, shall be transmitted to the General Land Office, and that office will thereupon submit the case to the Secretary for action, presenting therewith its recommendation and that of the Geological Survey. In case the Geological Survey recommends that a permit be issued to the applicant that office will submit with its recommendation to the General Land Office a draft of such permit, in duplicate, together with two copies thereof and a draft of a letter to the applicant transmitting the permit to him for execution. After execution by the applicant and approval by the Secretary, the General Land Office will note the fact of such approval on the maps of location, will transmit one original of the permit to the permittee and one copy thereof to the Geological Survey, and will transmit one tracing of all maps of location, one set of field notes, and one copy of the permit to the local land office for filing, and will retain one original of the permit, one tracing of all maps of location, and one set of field notes in the files of the General Land Office. The approval of the permit and the dates of initiation of priority and of valid rights of the permittee will thereupon be noted on the tract records of the general and local land offices.

Matters of relative priority of applications under these regulations, incompatibility of works, relative beneficial utilization of resources, and the like, including all protests against the approval of applications on these grounds, shall be considered by the Geological Survey and covered by its recommendations.

After the issuance of the permit, the Geological Survey will make such investigations and report to the Secretary as may be necessary for the determination and revision of rates and capacities, the supervision of construction and operation and of the records of the permittee as contemplated by these regualtions, and, in general, for all engineering matters pertaining to the power development and the power resources involved. The compensation for the first year shall be transmitted by the applicant to the Secretary with the executed agreement prior to the issuance of the permit, in the form of a certified check to the order of the Secretary of the Interior, who, upon the issuance of the permit, will indorse the same to the order of the receiving clerk of the General Land Office for deposit to the credit of the Treasurer of the United States as "Sales of public lands."

Under the authority given by the said act of February 15, 1901 (c. 372, 31 Stat. 790), the foregoing regulations are, on this 1st day of March, 1913, hereby made and fixed with respect to applications and permits for rights of way under the said act for the development, transmission, and use of power through the public lands and reservations of the United States (except national forests) and the Yosemite, Sequoia, and General Grant National Parks, superseding the regulations approved August 24, 1912.

WALTER L. FISHER,
Secretary of the Interior.

(Forms omitted.)

[Reported, 42 L. D. 348]

ADDENDA TO REGULATIONS OF MARCH 1, 1913—ACT OF FEBRUARY 15, 1901

Department of the Interior,
Washington, July 19, 1913.

The Commissioner of the General Land Office:

In order to provide for greater elasticity in dealing with the varying conditions under which water-power permits are issued, the regulations under the act of February 15, 1901 (31 Stat. 790), made and fixed by the Secretary of the Interior on March 1, 1913 (41 L. D. 532), are hereby modified to the extent of inserting the phrase " unless otherwise specified in the permit and " at the beginning of regulation 6, and the phrase " unless otherwise ordered by the Secretary " at the beginning of regulation 8.

Franklin K. Lane,
Secretary of the Interior.

[Reported, 42 L. D. 465]

RIGHT OF WAY—PARAGRAPH 6 OF REGULATIONS OF JANUARY 6, 1913, AMENDED

Department of Interior,
General Land Office,
Washington, October 15, 1913.

The Secretary of the Interior.

Sir: By letter dated June 25, last, this office submitted to the department, with favorable recommendation, a map filed by the Pacific Telephone & Telegraph Co., in connection with its application for a 50-year easement for the telephone and telegraph line shown on the map, under the provisions of the act of March 4, 1911 (36 Stat. 1253).

Considering this matter, under date of July 14, last, the First Assistant Secretary of the Interior directed me to draft an amendment to the regulations making it obligatory on applicants in such cases to construct, maintain, and operate their lines so as to obviate as much as possible interference with the use and development by subsequent entrymen and patentees of the lands traversed by the lines. To this end, I recommend that regulation 6 of the regulations approved January 6, 1913 (41 L. D. 454), be amended so that it will read as follows:

> Regulation 6. Before any right of way is granted the applicant shall execute and file in or in amendment of his application a statement of the particular terms and conditions upon which and subject to which he asks to receive and agrees to take the grant of right of way; and he further agrees to construct, maintain, and operate the line or lines embraced by his application according to the usual standard of safety in such cases, and shall maintain the line or lines in such manner as not to menace life or property, and to interfere as little as possible with the use and development by subsequent entrymen and patentees of the lands traversed by the line or lines—it being understood and agreed that less than 20 feet on each side of the center line is covered by the easement wherever such diminished right of way is found adequate for a proper

use and enjoyment thereof; the grant may be made subject to these terms and conditions, in which case such terms and conditions, together with these regulations, shall define and limit the grant, which shall be effective only if and in so far as it is subject to such terms, conditions, and regulations. Such original or amended application with the approval thereof by the Secretary of the Interior shall together constitute the grant and express the terms and conditions thereof, and the fact of such approval shall be noted on the application maps.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved October 25, 1913.

A. A. JONES,
First Assistant Secretary.

[Reported, 44 L. D. 6]

RIGHT OF WAY—NOTATION ON FACE OF PATENT

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 3, 1915.

THE SECRETARY OF THE INTERIOR.

SIR: By departmental order of August 23, 1912, this office was directed, inter alia, as follows: "You will, therefore, be guided by the following regulation in the issuance of all patents:"

> In every patent hereafter issued for a tract of land traversed by a right of way approved or permitted (including revocable permits) under any of the right of way laws and not forfeited or revoked before such issuance, such right of way or permit shall be expressly noted on the face of the patent by specific reference to the date when, and the statute under which, the approval was made or permit issued. Such notation shall be in substantially the following form.

In compliance with this order it became necessary for the General Land Office to reconstruct and revise its methods and practices so that no patent should be issued for land over which an approved right of way had been allowed without a notation upon such patent of the existence of a possible claim adverse to the patentee by reason of the approval.

A proper compliance with the order made it necessary for the Department of the Interior to request the Department of Agriculture to file in the General Land Office, for notation upon the tract books, all permits issued by the Forester, or by the Department of Agriculture, affecting lands within the jurisdiction of the Department of Agriculture, but which might thereafter be returned to the public domain by exclusion from the forest or other withdrawals on behalf of the Department of Agriculture. It also made it necessary for the various bureaus of the Interior Department to make a like return of all permits or easements granted through such bureau.

For nearly three years now the experiment of noting rights of way upon patents as a matter purely of information and not as a reservation has been tried, and my opinion is that as a matter of administration the extra work entailed in determining the various questions necessarily determinable before such notation can be made is far in excess of any good result which may be had or expected to be had through such notation.

Further, many serious and vexatious questions have arisen as a result of these notations. Scores of letters have been received protesting against the notations and claiming that they constitute a cloud upon otherwise perfect titles. While it is not deemed by this office that these strictures are well taken, in view of the fact that the notation is purely and simply a warning to the patentee, and not in any sense a reservation, it is difficult to make the ordinary layman understand this, and, in many instances, even lawyers have registered their protests against notations of this character, which to them seems unwarranted.

Personally, I can see no benefit accruing to a patentee by such notations. If, for instance, a railroad or a canal is constructed across the lands sought to be entered, the physical evidence of some prior claim is so patent that no proposing entryman would be justified in claiming that he took the lands without notice of such rights. If, on the other hand, the railroad, canal, or other structure, right of way for which had been approved by the Secretary of the Interior, had not been constructed, a notice of such right would appear upon the tract books of the local office and the General Land Office, and under the general regulations when the homestead or entry was accepted by the local office, notation of the approved right of way would be placed upon the entry papers. If the entryman accepted the entry with such knowledge of the right of way as is conveyed by the notation on the entry papers, it is difficult to see why he should be given further information by a notation on the patent.

In many instances, and especially in the early days of the administration under the act of March 3, 1875 (18 Stat. 482), rights of way for railroads were approved for lines shown to extend over unsurveyed land only. These approvals, of course, were not noted on the tract books of this or the local office, for the obvious reason that the land, being unsurveyed, was not covered by the then existing tract books. Later, when the lands were surveyed, maps of constructed line were filed in accordance with the regulations, but in view of the former approval were not submitted to the department for consideration, but were only accepted for filing for general information by the Commisioner of the General Land Office. Thus the approval never became a matter of tract-book record.

Many years afterwards the department ruled that it had no authority to approve right-of-way applications over unsurveyed land, but that such applications could only be accepted for filing for general information, without giving to the applicants any rights other than the general right to construct its road. In other words, such acceptance for filing for general information was simply an intimation that the department would interpose no objection to applicant's constructing its road whenever it might see fit to do so. In consequence, there are scores of railroad right-of-way applications over unsurveyed lands which prior to the last-mentioned decision of the department were approved, but which in the light of the departmental holding that the department was without authority to approve right-of-way applications over unsurveyed land are probably without effect. This state of affairs has been discovered in the General Land Office, and to remedy it to the extent of obtaining approvals on maps of constructed road predicated upon approvals over unsurveyed land, I transmitted to the department under date of February 27, 1915, a map of constructed road of the Southern Pacific Railroad Co. for approval, to the end that it might be properly noted on the tract books of this and the local office.

Of course, were it not for the necessity of noting approved rights of way upon patents, as required by the present rule, it would be unnecessary to transmit these old maps of constructed road for approval by the department, in view of the fact that any rights obtained by the company were so obtained by construction and not by approval. A number of other instances might be mentioned where the department has been embarrassed by this notation order, notably the case of the Washington Water Power Co., in which very serious and strenuous exception has been taken by the patentees to the notation of the permit which was placed upon their patents. Complaint was received in one case that a purchaser under contract to purchase refused to consummate his contract because of the notation, claiming that it constituted a cloud upon the title.

While he might have gone into court with an action for specific performance and probably would have obtained judgment either for specific performance or damages, he elected rather than to undergo the expense of a suit and the incident delay, to accept $800 less than the contract price for his land.

To sum the matter up, it appears to me that this order for notation upon patents of rights of way and permits, which was intended to be for the benefit of entrymen, has not materially served that object, besides increasing the work of this office, delaying the issuance of patent and the adjudication of cases. It appears to be generally considered as some sort of a cloud on the title to the land patented. This office has endeavored, to the best of its ability, to make known publicly and to all inquirers that the notation was not to be considered as a reservation, but simply as a notice that there might be some claim or right in connection with the easement. Despite all the efforts of this office along this line, however, the impression still seems to prevail that the notation constitutes some sort of a cloud on the title.

One protestant claimed that he had lost the sale of a piece of land purely and simply through such a notation, and concluded that if the Government had legal authority to place a notation on the patent, such notation should be in the body of the patent and not as a marginal note; that if it was the idea of the Government simply to notify the patentee that there might be some cloud against the land by way of easement or permit, it could just as well be done by a letter of transmittal as to place it upon the patent, thus clouding the title, at least to some extent, without express authority of law.

I would suggest, therefore, that the order of August 23, 1912, so far as it refers to the notation of rights of way and permits upon patents be recalled and vacated and that this office be directed to return to the former practice of issuing patents free and clear of any notation or other extraneous matter, excepting such restrictions as may be proper under the policies enunciated in 23 L. D. 67 and 458,[e] which had been adhered to up to the time of the issuance of the order of August 23, 1912, and such notation or reservations as may be now or hereafter specifically directed by Congress or by the department.

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[e] See Circular of Nov. 27, 1896, p. 1303.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved April 14, 1915.

A. A. JONES,
First Assistant Secretary.

[Reported, 44 L. D. 127]

CIRCULAR No. 416

MODIFICATION OF RIGHT-OF-WAY REGULATION OF JUNE 6, 1908

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, June 18, 1915.

Registers and Receivers, United States Land Offices.

SIRS: By order of the department, paragraph 30a of the regulations for rights of way over public lands and reservations (36 L. D. 567), is modified to read as follows:

(*a*) No reservation will be made for a reservoir of less than 250,000 gallons' capacity, and for a reservoir of less than 500,000 gallons' capacity not more than 40 acres can be reserved. For a reservoir of 500,000 gallons' and less than 1,000,000 gallons' capacity not more than 80 acres can be reserved. For a reservoir of 1,000,000 gallons' and less than 1,500,000 gallons' capacity not more than 120 acres may be reserved. For a reservoir of 1,500,000 gallons' capacity or more 160 acres may be reserved. In the case where the water is furnished the livestock by artificial means, such as by windmill, pump, tanks, troughs, etc., the regulations requiring a minimum capacity 250,000 gallons may be waived, upon the claimant submitting a satisfactory showing that by such artificial means he will be able to furnish sufficient water and provide proper troughs, etc., to properly accommodate all cattle likely to water at the place in question.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[See 45 L. D. 91]

CIRCULAR No. 479

RIGHTS OF WAY—AMENDMENT OF REGULATIONS OF JUNE 6, 1908 (36 L. D. 567)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 10, 1916.

Registers and Receivers, United States Land Offices.

SIRS: Under date of May 24, 1916, the department amended paragraph 53 of the regulations approved June 6, 1908 (36 L. D. 567, 586), concerning rights of way over public lands and reservations for canals, ditches, reservoirs, etc., under section 4 of the act of February 1, 1905 (33 Stat. 628), to read as follows:

53. *Rights of way through unsurveyed land.*—Maps showing reservoirs, canals, water plants, etc., wholly upon unsurveyed lands will be received and acted upon in the manner hereinbefore prescribed for surveyed lands.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 47 L. D. 117]

CIRCULAR No. 638

RESERVOIRS FOR WATERING STOCK ON UNSURVEYED LANDS—PRIOR REGULATIONS AMENDED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 8, 1919.

Registers and Receivers, United States Land Offices.

SIRS: It is ordered that paragraph 36 of the circular of June 6, 1908 (36 L. D. 576), being a part of that portion of said circular which relates to use and occupancy of public lands with and by reservoirs for stock-watering purposes under the act of January 13, 1897 (29 Stat. 484), be, and the same is hereby, amended to read as follows:

36. (*a*) In any case where the proposed reservoir is to be located upon unsurveyed public land, the declaratory statement may be filed, the land being therein described by metes and bounds and, as well, by the description which it is believed it will bear when officially surveyed. Proof of construction must be submitted at the end of the same period of time and in the same manner as is prescribed and required in cases where the lands have been previously surveyed. Such proof should embrace the field notes and a plat of a survey such as is required in cases of reservoirs on surveyed lands, with such modifications as are necessary (par. 32), the initial point of such survey being fixed by means of a traverse line run to the nearest existing corner of a public-land survey, not more than 6 miles distant from such point; if there be no such corner within that limit of distance, then the reference should be to some well-known or easily identifiable natural monument or such monument being absent, to a fixed, permanent, and readily recognizable artificial monument.

(*b*) Any reservation made pursuant to this statute secures only a license to use and occupy the reserved land with and for a reservoir, and this license may endure permanently or may be of transient duration. No estate in the land is granted. For this reason it is administratively undesirable that private surveys made pursuant to the statute and these regulations shall be preserved and established by subsequent public-land surveys and approved plats thereof. When, therefore, the public-land surveys have been extended over land covered by a reservoir declaratory statement affecting unsurveyed lands, the declarant shall adjust his survey to the lines of the official survey, showing the location of the reservoir with respect to said lines by means of properly established tie lines. Any subsequent reservation which may be ordered will be of those subdivisions thus shown to be occupied by or necessary for the proper use of the reservoir.

(*c*) An annual affidavit of maintenance must be submitted the same as though the reservoir had been constructed on surveyed lands. Nothing in these regulations contained shall preclude the General Land Office or the department from requiring additional information in any case where that information is deemed proper or necessary.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 48 L. D. 113]

CIRCULAR No. 757

INSTRUCTIONS, ACT MARCH 1, 1921—EASEMENT FOR DITCH-RIDER STATIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 16, 1921.

Registers and Receivers, United States Land Offices.

SIRS: An act entitled "An act to amend acts to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved March 1, 1921 (41 Stat. 1194), reads:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in addition to the rights of way granted by sections 18, 19, 20, and 21 of the act of Congress entitled "An act to repeal timber culture laws, and for other purposes," approved March 3, 1891 (Twenty-sixth Statutes, page 1095), as amended by the act of Congress entitled "An act to amend the irrigation act of March 3, 1891 (Twenty-sixth Statutes, page 1095, section 18), and to amend section 2 of the act of May 11, 1898 (Thirtieth Statutes, page 404)," approved March 4, 1917 (Thirty-ninth Statutes, page 1197), and, subject to the conditions and restrictions therein contained, the Secretary of the Interior is authorized to grant permits or easements for not to exceed five acres of ground adjoining the right of way at each of the locations, to be determined by the Secretary of the Interior, to be used for the erection thereon of dwellings or other buildings or corrals for the convenience of those engaged in the care and management of the works provided for by said acts: *Provided,* That this act shall not apply to lands within national forests.

Applicants for rights of way under this amendment will be governed by the regulations set forth in the circular approved June 6, 1908 (36 L. D. 567), in so far as applicable, appropriate additions being made to the forms on the maps therein prescribed so as to include this amendment.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved May 16, 1921.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 147]

CIRCULAR No. 1003

AMENDING SECTION 38, CIRCULAR OF JUNE 6, 1908

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE,
Washington, May 18, 1925.

Registers and Receivers, United States Land Offices.

GENTLEMEN: April 13, 1925, the Acting Secretary of the Interior directed that section 38, circular of June 6, 1908, as amended May 7, 1912 (41 L. D. 13), be modified to read as follows:

38. *Nature of grant.*—It is to be specially noted that this act does not make a grant in the nature of an easement but authorizes a mere permit in the nature of a license, which permit may be revoked by the Secretary, or his successor, at any time in his discretion. Further, it gives no right whatever to take from public lands, reservations, or parks adjacent to the right of way any materials, earth, or stone, for construction, or other purposes. The final disposal by the United States of any tract traversed by a right of way permitted under this act shall not be considered to be a revocation of such permission in whole or in part but such final disposal shall be deemed and taken to be subject to such right of way until such permission shall have been specifically revoked in accordance with the provisions of said act.

The effect of this modification is a departmental recognition of the fact that a permit, under the act of February 15, 1901 (31 Stat. 790), once having been issued is a subsisting burden upon the land even after patent, until canceled by the Secretary of the Interior.

You should, therefore, as a matter of warning, note upon all applications to appropriate public lands, affected by a previously filed application under the act of 1901, the words "subject to right of way act of February 15, 1901 (stating name of permittee)."

This notation need not be made upon the final certificate when issued, and will not be carried into the patent.

It should be noted, however, that a permit under the act of 1901, for hydroelectric power purposes is construed as being tantamount to a withdrawal of the land for power purposes, the lands affected can be disposed of only subject to the terms and conditions of section 24 of the Federal water power act.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 51 L. D. 485]

Circular No. 1076

AMENDING CIRCULAR OF JUNE 6, 1908 (36 L. D. 567), CONCERNING RIGHTS OF WAY OVER PUBLIC LANDS AND RESERVATIONS FOR CANALS, DITCHES, AND RESERVOIRS

Department of the Interior,
General Land Office,
Washington, July 8, 1926.

Registers, United States Land Offices.

Sirs: Your attention is called to an act of Congress (44 Stat. 668) which reads as follows:

An act to amend section 18 of the irrigation act of March 3, 1891, as amended by the act of March 4, 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 18 of what is generally known as the irrigation act of March 3, 1891, as amended by act of March 4, 1917, be, and is hereby, amended so as to read as follows:

"Sec. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal ditch company irrigation or drainage district formed for the purposes of irrigation or drainage, and duly organized under the laws of any State or Territory, and which shall have filed, or may hereafter file, with the Secretary of the Interior a copy of its articles of incorporation or, if not a private corporation, a copy of the law under which the same is formed and due proof of its organization under the same, to the extent of the ground occupied by the water of any reservoir and of any canals and laterals and fifty feet on each side of the marginal limits thereof, and, upon presentation of satisfactory showing by the applicant, such additional right of way as the Secretary of the Interior may deem necessary for the proper operation and maintenance of said reservoirs, canals, and laterals; also the right to take from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation of the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation; and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

Approved May 28, 1926.

Apart and aside from extending the scope of the granting act so to include irrigation and drainage districts as beneficiaries, it will be noted that this act authorizes right of way, if needs be, additional to the 50 feet granted by the act of March 3, 1891 (26 Stat. 1095). To obtain such additional right of way, explanatory showing must accompany the application. This should consist of an affidavit by the applicant's engineer or surveyor setting forth succinctly the extent of the additional right of way required and the necessity therefor. The additional right of way should also be shown graphically by lateral limit lines on the map filed in connection with the application. If additional right of way is wanted only for portions or sections of the reservoirs, canals, ditches, or laterals, the termini thereof should be fixed by engineer's survey stations in addition to the lateral limit lines.

This circular should be assembled on page 2 of the circular of June 6, 1908 (36 L. D. 567), as an addendum to paragraph 2 of said circular.

Very respectfully,

William Spry, *Commissioner*.

Approved July 8, 1926.

E. C. Finney,
First Assistant Secretary.

PERMITS UNDER ACT OF FEBRUARY 15, 1901 (31 STAT. 790), ISSUED PRIOR TO MARCH 1, 1913

Department of the Interior,
Washington, *August 21*, *1929*.

The Director of the Geological Survey.

Dear Mr. Director: By letter of June 1, 1929, you direct attention to the right of way for a transmission line (Phoenix 0945) of the Arizona Power Co., approved by the department May 20, 1911, under the act of February 15, 1901 (31 Stat. 790), with the following indorsement:

> The use of the right of way shown in black on the map is hereby permitted in accordance with the provisions of the act of Congress approved February 15,

1901 (31 Stat. 790), and the regulations present or future thereunder and subject to the stipulation accompanying the record.

You also advise that this is one of more than 200 permits which were granted in this manner with an indorsement on the map granting the permission subject to the provisions of the act of February 15, 1901, and future regulations thereunder.

Copy of a stipulation executed May 11, 1911, by the Arizona Power Co. is submitted with your letter, whereby the company agrees to conform to any future laws and regulations with respect to power development on the public lands and consents to accept said right of way subject to the terms and conditions of the stipulation.

On August 24, 1912, and March 1, 1913, regulations concerning rights of way through public lands for power purposes under the act of 1901 were approved by the Department.[a] These regulations, among other things, provide as follows:

(*a*) For the payment of compensation for the use of public lands by the permittee.

(*b*) For annual reports of operations under the permit to be submitted by the permittee to the Geological Survey.

(*c*) For inspection of the works of the permittee by the Geological Survey and for such reports to the secretary as may be necessary, and

(*d*) For termination of the permit within 50 years.

Subsequently, the Federal water power act of June 10, 1920 (41 Stat. 1063, U. S. Code, secs. 791–823), was passed creating a Federal Power Commission and providing for the development of water power, the use of public lands in relation thereto, and other purposes.

You report that about 100 permits and grants were issued by the department subsequent to the regulations of August 24, 1912, and previous to the passage of the Federal water power act, and that all of these permits and grants require payment of compensation by the applicant for the use of Government lands and the submission of annual reports. Annual inspections of the projects are also made.

You request instructions as to whether regulations of March 1, 1913, and amendments thereto, which superseded the regulations of August 24, 1912, should apply to the permit issued to the Arizona Power Co. You also request general instructions as to whether these regulations should be applied to the 200 or more permits and grants of a similar character.

The act of 1901 expressly provides:

> That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

This clause was construed by the United States Supreme Court in the case Swendig *v.* Washington Water Power Co. (265 U. S. 322), in connection with a different question, but the court recognized the fact that it was the plain intention of Congress to confer upon the Secretary of the Interior broad powers of supervision and control over permits issued under this act. In that case the court said:

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[a] The regulations of Mar. 1, 1913, p. 1340, superseded those of Aug. 24, 1912.

> The purpose of the act is to grant to the Secretary power "to permit the use of rights of way" through the lands referred to. And, in order that control over them may be retained, it is provided that the Secretary, in his discretion, may revoke such permits.
>
> * * * * * * *
>
> The clause above quoted should be read to promote and advance, not to defeat, the legislative purpose to permit the use of rights of way through public lands for the industries and utilities mentioned. It is included from an abundance of caution to support and safeguard the Secretary's power of revocation. It means that the permissions given shall not be deemed to confer any right that may not be revoked by him in the exercise of his discretion. There is no other enactment providing for the termination of the use of the rights of way. The right to use continues until the permission given by the Secretary is revoked by him.
>
> As the sole power of revocation was committed to his discretion, it was within the power of the Secretary to determine that final disposal of the lands would operate to revoke the permission; and it was also within his power, by the regulation of August 24, 1912, to declare that final disposal shall not be deemed to be a revocation, but shall be subject to the right of way until such permission shall have been specifically revoked.

From the nature of the right and the discretionary power granted the Secretary, it seems clear that the permits granted were subject to such regulations as the Secretary in the public interest might deem necessary. The only limitation upon such power seems to be that such action shall not be arbitrary or unreasonable or such as would destroy valuable interests established by the permittee under the authority of the permit. It can not be said that it would be arbitrary or unreasonable for the Secretary to require all who have secured the benefit of the use of public lands for power purposes to conform to a uniform system of regulations, or to change such regulations as he may deem proper, regardless of the time when the permission to use the land was granted. In fact, out of due precaution in many cases, as pointed out in your letter, the Secretary granted the permission subject to regulations, present or future, thereunder, and in the Arizona Power Co. case an express stipulation to that effect was entered into.

The regulations in question have been in force for years and have been applied to many permits issued under the act of 1901. There seems to be no good reason why they should not be applied to all permittees alike. There is no right which the parties having the use of the lands prior to the promulgation of the regulations possessed at that time which would be abridged by the application of these regulations to them.

Section 23 of the Federal water power act provides in part:

> That the provisions of this act shall not be construed as affecting any permit or valid existing right of way heretofore granted or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality, holding or possessing such permit, right of way, or authority may apply for a license hereunder, and upon such application the commission may issue to any such applicant a license in accordance with provisions of this act and in such case the provisions of this act shall apply to such applicant as a licensee hereunder.

The Federal water power act provides a complete and detailed scheme for the development and operation under public control of all the water-power resources of the public domain, reserved and unreserved, and of all the navigable rivers under the jurisdiction of the United States. It seems clear that it was the purpose of Congress to bring under this act all future power development within the jurisdiction of the United States and to concentrate in the hands of the Federal Water Power Commission all the administrative authority thereover which was in part previously distributed among the several departments. It is evident that the intent of the act, as well as its necessary operation, is to ultimately bring under the new law and under the control of the Power Commission all existing, as well as all future, developments (32 Ops. Atty. Gen. 525).

Parties holding rights to use the lands under authority of the act of 1901 and other similar acts, are extended the right to make application for permit or license under the Federal water power act. In fact, some have availed themselves of this right and have secured such licenses.

I perceive no reason why the department may not require the several permittees under the act of 1901 and similar acts to comply with the requirements of the regulations of 1913, and you are accordingly instructed that the parties in interest should be advised that after a reasonable time to be fixed by appropriate order, the said regulations will be applied to all permits issued under said acts, unless the said parties within the time specified file with the Federal Power Commission an application for license under the provisions of the Federal water power act.

Very truly yours,

John H. Edwards, *Assistant Secretary.*

[illegible]

As the sole power of revocation was committed to his dis[illegible]

[illegible] such action shall not be arbitrary or unreasonable [illegible] would destroy valuable interests established by the permittee under the authority of the permit. It can not be said that it would be arbitrary or unreasonable for the Secretary to require all who have secured the benefit of the use of public lands for power purposes to conform to a uniform system of regulations, or to change such regulations as he may deem proper, regardless of the time when the permission to use the land was granted. In fact, out of due precaution in many cases, as pointed out in your letter, the Secretary granted the permission subject to regulations, present or future, thereunder, and in the Arizona Power Co. case an express stipulation to that effect was entered into.

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The Federal water power act provides a complete and detailed scheme for the development and operation under public control of all the water-power resources of the public domain, reserved and un-

SOLDIERS' ADDITIONAL ENTRIES[a]

[Reported, 1 L. D. 654, Rev. Ed.]

REVISED REGULATIONS RELATIVE TO SOLDIERS' AND SAILORS' ADDITIONAL HOMESTEAD ENTRIES

Department of the Interior,
General Land Office,
Washington, February 13, 1883.[b]

Commissioner McFarland to Registers and Receivers:

Section 2306 of the Revised Statutes of the United States provides that any person entitled to make a homestead entry under section 2304 (providing for the benefit of soldiers and sailors of the late war), who had, prior to June 22, 1874, made a homestead entry of less than 160 acres, may enter an additional quantity of land sufficient to make, with the previous entry, 160 acres.

The right granted by this section, and extended by section 2305 to the widow, if unmarried, or otherwise to the minor orphan children by proper guardian, is a personal one and is not transferable, nor subject to assignment or lien, nor can it be exercised by another. It can lawfully be exercised only by the soldier or sailor, or by the widow or guardian, as the case may be, in his or her own proper person.

The practice which has hitherto prevailed of certifying the additional right as information from the records of this office and permitting the entry to be made by an agent or attorney is hereby discontinued.

The following regulations will hereafter be strictly observed:

1. The party desiring to make an additional entry, and being entitled thereto, must present himself at the land office of the district in which the land he wishes to enter is situated, and make his application in the same manner as in case of an original entry. (Form No. 4–008.)

2. In addition to the usual homestead affidavit the claimant must make a special affidavit showing—

First. His identity as the soldier he represents himself to be, reciting his military service, and stating his present residence and post-office address.

Second. The facts, in detail, respecting his right to make the additional entry, and that he has fully complied with the provisions of the homestead laws in the matter of residence upon and cultivation and improvement of his original entry, and whether or not he has proved up his claim and received a patent for the land.

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[a] For instructions relative to publication in connection with soldiers' additional entries, see Circulars of Feb. 21, 1908, p. 449, Mar. 26, 1908, p. 450, Nov. 3, 1909, p. 451, and Oct. 19, 1929, p. 1149.

[b] These regulations are reproduced because of the directions given therein as to the discontinuance of the practice of certifying additional rights as information from the records. For later instructions with reference to soldier's additional entries, see Circular No. 1047, p. 1377.

Third. That he has not in any manner previously exercised his additional right either by entry or application, or by sale, transfer, or power of attorney, but that the same remains in him unimpaired.

3. The foregoing affidavits must be sworn to and subscribed in the presence of the register or receiver. This rule must be strictly adhered to in order to avoid false personation; and applications and affidavits presented to the register and receiver with signatures attached will not be received. Department circulars of May 17, 1877, and September 1, 1879, are modified accordingly.

4. These rules will not be deemed to apply to cases where the additional right has heretofore been certified by this office, nor to cases now pending, or which may be filed in this office prior to March 16, 1883.

Approved.

H. M. Teller, *Secretary.*

[Reported, 19 L. D. 302]

SOLDIERS' ADDITIONAL HOMESTEAD—ACT OF AUGUST 18, 1894

Department of the Interior,
General Land Office,
Washington, D. C., October 16, 1894.[1]

Registers and Receivers, United States Land Offices.

Gentlemen: Your attention is called to the following provision contained in an act of Congress entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1895, and for other purposes," approved August 18, 1894, viz:

> That all soldiers' additional homestead certificates heretofore issued under the rules and regulations of the General Land Office under section twenty-three hundred and six of the Revised Statutes of the United States, or in pursuance of the decisions or instructions of the Secretary of the Interior, of date March tenth, eighteen hundred and seventy-seven, or any subsequent decisions or instructions of the Secretary of the Interior or the Commissioner of the General Land Office, shall be, and are hereby, declared to be valid, notwithstanding any attempted sale or transfer thereof; and where such certificates have been or may hereafter be sold or transferred, such sale or transfer shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value; and all entries heretofore or hereafter made with such certificates by such purchasers shall be approved, and patent shall issue in the name of the assignees.

You will observe that all certificates of right regularly issued by this office, showing that the parties named therein are entitled to make soldiers' additional homestead entries, are declared to be valid by the statute, notwithstanding any attempted sale or transfer, and that, where such certificates have been or may hereafter be sold or transferred, the sale or transfer thereof shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of bona fide purchasers for value, and that all entries made by such purchasers therewith shall be approved and patent shall issue in the name of the assignees, but before approving such entries for patent the transferee shall file in this office satisfactory proof of ownership and of bona fide purchase for value.

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[1] See circular of Apr. 1, 1910, p. 1373.

To enable assignees of these certificates to exercise in their own names the right of entry confirmed by this statute, it is directed that the certificate itself shall, in each instance, prior to any entry by the assignee, be presented to this office for examination and additional certification covering the fact of assignment. Holders of such certificates desiring to exercise a right of entry in their own names must file such certificates in this office, together with satisfactory proof of ownership and of bona fide purchase for value. If, upon examination, the proof so filed is satisfactory, an additional certificate will be attached to the original authorizing the location thereof or entry of land therewith, in the name of the assignee or his assigns. You will allow no entries in the names of assignees except upon presentation of such additional certificates issued by this office. When such additional certificates are presented you will issue homestead papers and the final certificate and receipt, in the name of the transferee, referring to him in said papers as the " assignee " of the soldier.

You will also observe that this law does not prohibit the location of said certificates by the holders as heretofore, either by the soldiers in person or by others acting as attorneys for the soldiers and in the names of the soldiers. Therefore, when application is made to locate such a certificate by the holder in the name of the soldier, you will allow the entry of land under said certificate if the application papers are regular in all other respects, and issue the homestead papers and final certificate and receipt in the name of the soldier, under the instructions heretofore issued in reference to such cases, which are still operative.

When soldiers, to whom certificates of right have not been issued, who made their original homestead entries for less than 160 acres prior to June 22, 1874, and who have not exhausted their additional rights, apply in person to make entries, you will, as heretofore, before allowing the applications to go to record, transmit the same to this office for examination, as directed in the circular letter of February 18, 1890, which is still operative in regard to this class of claims.

Very respectfully,

S. W. Lamoreux, *Commissioner.*

Approved.

Hoke Smith, *Secretary.*

[Reported, 30 L. D. 604]

TRANSFER AND ASSIGNMENT OF SOLDIER'S ADDITIONAL RIGHTS

Department of the Interior,
General Land Office,
Washington, May 8, 1901.

Registers and Receivers, United States Land Offices.

Gentlemen: To prevent confusion and provide a uniform rule for the transfer and assignment of soldiers' additional rights, recertified to owners and bona fide purchasers under the act of Congress of August 18, 1894 (28 Stat. 372, 397–398), and official circular of

October 16, 1894 (19 L. D. 302), the following additional instructions are hereby promulgated:

1. The assignment may be written or printed upon a separate sheet or sheets of paper to be securely attached to the certificate.

2. Each assignment must be attested by two witnesses and duly acknowledged before some officer authorized to take acknowledgments of deeds in the county or district wherein the assignment is made, who shall certify that the assignor is well known to such officer, that he is the identical person to whom the soldier's additional right was recertified, and who executes the assignment thereof.

3. The following forms are prescribed for use in making assignments. These forms, or others containing the substantial matter thereof, will be accepted as a compliance with these instructions:

[Form No. 1]

ASSIGNMENT BY FIRST OWNER UNDER RECERTIFICATION

For value received, I ______ ______, of ______, in the ______, and ______, assignee of the original beneficiary, to whom the foregoing and attached certificate was, upon the ______ day of ______, 190__, issued by the Commissioner of the General Land Office under section 2306 of the Revised Statutes of the United States, and the same ______ ______, to whom, as a bona fide purchaser and owner thereof, such original certificate was, upon the ______ day of ______, 190__, recertified by the Commissioner of the General Land Office under the act of Congress of August 18, 1894, and official circular of the General Land Office, dated October 16, 1894, do hereby sell and assign unto ______ ______, of ______, in the ______, and ______, and to his heirs and assigns forever, the said certificate and the right of entry and location thereby secured, and authorize him to locate the said certificate and to enter lands therewith and to receive a patent for any land so located or entered.

____________________________ [L. S.]

Attest:

____

____

[Form No. 2]

ACKNOWLEDGMENT OF FORM NO. 1

______ ______,

______ ______, *ss:*

On this ______ day of ______, 190__, before me personally came ____________, to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said ____________, is the identical person to whom the within certificate was recertified upon the ______ day of ______, 190__, and who executed the foregoing assignment thereof. And I further certify that the said certificate, at the time of making the foregoing assignment, was attached to said assignment and was presented by and was in the possession of him, the said ____________.

____

____

[Form No. 3]

ASSIGNMENT BY ASSIGNEE OF FIRST OWNER

For value received, I, ____________, to whom the foregoing and attached certificate and right of entry and location thereby secured were assigned, do hereby sell and assign unto ____________, of ______, in the ______, and ______, and to his heirs and assigns forever, the said certificate and right of entry and location, and authorize him to locate the said certificate and to enter lands therewith and to receive a patent for any lands so located or entered.

________________________ [L. S.]

Attest:

____

____

[Form No. 4]

ACKNOWLEDGMENT OF FORM NO. 3

On this ______ day of ______, 190__, before me personally came ____________, to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said ____________, is the identical person to whom the foregoing and attached certificate and right of entry and location thereby secured were, on the ______ day of ______, 190__, heretofore assigned. And I further certify that the said certificate, at the time of making the foregoing assignment, was attached to said assignment, and was presented by and in the possession of him, the said ____________.

____

____

4. Subsequent assignments may follow Form No. 3 above.

5. You will allow locations or entries in the name of the assignee when substantial compliance with the foregoing instruction is shown.

Binger Hermann, *Commissioner.*

Approved.

Thos. Ryan, *Acting Secretary.*

[Reported, 38 L. D. 517]

SOLDIERS' ADDITIONAL—REISSUE AND RECERTIFICATION DISCONTINUED

Department of the Interior,
Washington, April 1, 1910.

Secretary Ballinger to the Commissioner of the General Land Office:

Hereafter the practice of recertifying "soldiers' additional homestead rights" and of issuing substitutes for lost or destroyed "soldiers' additional homestead" certificates will cease, and the circular of October 16, 1894 (19 L. D. 302), so far as it relates to certification, is hereby withdrawn and vacated.

There is no law requiring, or even authorizing, these certificates; nor is there any law in the administration of which they are essential or, in the present view, even desirable. They have bred confusion and misunderstanding as to their character and purpose, and have proven ofttimes to be instruments for the miscarriage of the purpose of the very statutes whose administration they were innocently designated to facilitate. As articles of commerce, their value has been misunderstood and the practice has fostered an idea that recertification, as it is commonly called, is necessary for the enjoyment of an unused soldiers' additional right by a bona fide assignee; whereas it is in nowise thus essential. Recertifying creates no rights; the practice, carefully confined, rarely affords evidence of such rights. Where the right really exists, there is no need of certifying or recertifying; where the right does not in law or fact exist, it goes without saying that there should be no certifying.

The act of August 18, 1894 (28 Stat. 372, 397), operates on existing certificates, theretofore issued, in the hands of bona fide purchasers for value. It in no way affects the basic right, or alleged right, for which no "certificate" had been issued, or, if issued, had been lost or destroyed prior to transfer for value.

The practice of recertifying, or of reissuing lost or destroyed certificates, has created, in some quarters, a misapprehension of the operation of this act and has led some to assume that there is such a thing as a ministerial duty laid on the department to recertify in any and all circumstances, when demand is made and proof is afforded of the loss or destruction of an original certificate, even where that certificate was inadvertently, improvidently, or unlawfully issued; even where the applicant, in the first instance, lacked the statutory qualifications for the "additional right" which the certificate, prima facie, evinced. The department has endeavored never to recertify a right when the absence of some of its basic elements is brought to its attention. But occasionally there has been recertification under circumstances not justifying that indulgence, and, in fact, effecting a situation in derogation of the provisions of the homestead laws. While such cases form exceptional incidents, yet these incidents may, and have been, turned to the Government's disadvantage.

So it is deemed advisable hereafter, in all cases, not to exceed the plain statutory requirements in administering Revised Statutes, section 2306, and the act of August 18, 1894; and these requirements certainly do not include anything in the way of certification.

Circular No. 577

SOLDIERS' ADDITIONAL APPLICATIONS

Department of the Interior,
General Land Office,
Washington, December 7, 1917.

Registers and Receivers, United States Land Offices.

Sirs: In numerous applications for making entry under sections 2306 and 2307, Revised Statutes, commonly known as soldiers' additional homestead entries, the spaces provided for data concerning the original homestead entry, the military service of the homesteader, and the citizenship of the applicant are either left entirely blank or only partially filled, thus causing unnecessary work and delay in this office in looking up such facts, which should be furnished by the applicant and supplied to him by the dealers from whom he purchases the rights.

You are, therefore, directed to require all blanks in such applications (Form 4–008a), to be filled in before accepting the application. You will then make the proper notations on your records, date and sign the certificate printed at the foot of the application, and forward the papers, whether the right be certified or uncertified, as directed in circular No. 429, dated August 5, 1915 (unpublished).[c] An application by a married woman must allege the facts concerning her husband's citizenship, and if he is not a native-born citizen of the United States the proper record evidence of his naturalization must be furnished.

Many registers also fail to observe the difference between a soldier's additional entry and an ordinary homestead, by erroneously issuing the final certificate on Form 4–196.

As a soldier's additional application does not segregate the land nor prohibit the filing of other applications for such land until after your allowance of the entry, pursuant to its acceptance by this office, (see 37 L. D. 160), and the entry and final certificate bear the same date, you will, after collecting the fee and the original and final commissions and the Government price for the excess area, if any, issue the final certificate on Form 4–197, fill in the blank spaces provided for data concerning the original entry, and send the duplicate certificate to the claimant as notice to him of the date of your allowance of the entry. See note at the foot of Form 4–197.

If you are not supplied with Form 4–197 you should procure the same by requisition.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

[Reported, 47 L. D. 205]

CIRCULAR No. 648 [1]

APPROXIMATION ABOLISHED AS APPLIED TO SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 24, 1919.

Registers and Receivers, United States Land Offices.

SIRS: On June 13, 1919, the Secretary of the Interior made the following ruling in regard to the rule of approximation as applied to soldiers' additional homestead entries:

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[c] Circular No. 429 is not carried in this publication. The instructions given in that circular have been incorporated in Circular No. 616, par. 17, p. 51.

[1] Modified by Circular No. 655, p. 1377.

The Commissioner of the General Land Office.

Dear Mr. Commissioner: The department has considered the present practice of permitting the rule of approximation to be applied to soldiers' additional homestead entries.

Approximation was permitted as to soldiers' additional homestead entries in the instructions of the Commissioner of the General Land Office dated September 27, 1875 (see Miles Schoolcraft, 2 Copp's Land Owner, 99), and in the case of Richard Dotson, decided September 12, 1891 (13 L. D. 275). At that time, however, this department held that the right of additional entry was personal to the soldier and could not be assigned. After the decision of the Supreme Court in Webster *v.* Luther (163 U. S. 331), the same practice still obtained. The result is that these rights are being located practically entirely by assignees of the parties entitled to the right. Such assignees purchase them from dealers in this so-called soldiers' scrip. By means of dividing the rights into various parts, and by the application of the rule of approximation, areas of public land larger than necessary to satisfy the rights are being acquired by means of excess payments at $1.25 per acre, to the advantage of the dealer in the scrip but without material benefit to the soldier or his representatives, and in violation of the spirit of the act of March 2, 1889 (25 Stat. 854), prohibiting private entry except in the State of Missouri.

In his opinion February 25, 1899 (28 L. D. 149), Assistant Attorney General Van Devanter held that there was no reason for applying the rule of approximation to soldiers' additional homestead entries in Alaska since at that time the regular public-land surveys had not been extended to the Territory and the lands were entered under special surveys. The area embraced in the surveys, therefore, could be made equal to the area of the right. Since assignments of soldiers' additional homestead rights may be made in amounts differing from the quantity of land in legal subdivisions according to the public surveys (William C. Carrington, 32 L. D. 203), and since two or more rights or portions thereof may be located upon the same tract of land (Ole B. Olsen, 33 L. D. 225), there is no practical reason necessitating the allowance of approximation, and as remarked in George E. Lemmon (36 L. D. 543), approximation is a purely administrative equitable rule not founded upon any law and can not be insisted upon as an absolute right, and where the privilege is abused to accomplish an evasion of the law the Land Department has full power to change the rule to prevent such abuse.

Accordingly, the rule of approximation will no longer be permitted in the location of soldiers' additional homestead rights whether in their entirety, partly, or in combination with other rights or parts thereof. These instructions will become effective September 1, 1919, and locations of such rights made on and after that date will be governed hereby. You will prepare the necessary instructions to the local land offices.

Cordially yours,

Alexander T. Vogelsang,
First Assistant Secretary.

You are accordingly directed to require applicants for location of rights under sections 2306 and 2307 of the Revised Statutes (commonly known as "soldiers' additional homestead entries"), on and after September 1, 1919, to tender rights of sufficient area to equal the area of the land sought to be located.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 47 L. D. 206]

CIRCULAR No. 655

SOLDIERS' ADDITIONAL HOMESTEAD ENTRIES—DATE FOR ABOLISHING APPROXIMATION CHANGED FROM SEPTEMBER 1, 1919, TO DECEMBER 1, 1919—CIRCULAR NO. 648 MODIFIED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 22, 1919.

Registers and Receivers, United States Land Offices.

SIRS: Attention is directed to the following departmental letter of August 19, 1919:

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: Referring to my ruling of June 13, 1919, embodied in General Land Office Circular No. 648, June 24, 1919, in regard to rule of approximation, as applied to soldiers' additional homestead entries, it was directed that the new rule should become effective September 1, 1919. For good reasons shown, the department is convinced that the time limit is too short, and same is hereby extended to December 1, 1919. You will give this modification the same publicity given the original instructions.

Very truly yours,

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

Accordingly, on and after December 1, 1919, you will require applicants for location of rights under sections 2306 and 2307 of the Revised Statutes (commonly known as "soldiers' additional homestead entries") to tender rights of sufficient area to equal the area of the land sought to be located.

Very respectfully,

C. M. BRUCE, *Acting Commissioner.*

CIRCULAR No. 1047

GENERAL INFORMATION RELATIVE TO SOLDIERS' ADDITIONAL HOMESTEAD RIGHTS[2]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 9, 1926.

Any officer, soldier, seaman, or marine who served for not less than 90 days in the Army or Navy of the United States during the Civil War, receiving an honorable discharge therefrom, and who, prior to June 22, 1874, the date of the adoption of the Revised Statutes, made a homestead entry for less than 160 acres, may, under section 2306, Revised Statutes, enter an additional quantity of land which added to the previous entry will not aggregate more than 160 acres. This right was extended by section 2307, Revised Statutes, to the widow, if unmarried, otherwise to the minor orphan children.

By the Supreme Court decision of November 16, 1925, in the case of Clarence A. Anderson *v.* James W. Clune, No. 331, it was held that the grant vests a property right in the donee, to which must be accorded the quality of inheritability as well as assignability and that such right, if not exercised or transferred by the donee, passes to his estate as other property, subject only to the exercise of the rights given by section 2307, Revised Statutes, to the widow and minor orphan children.

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[2] See also par. 17, Circular No. 616, p. 51.

The soldier's additional right may be used (1) by the soldier in his lifetime either directly by entering the land or indirectly, in his lifetime, by conveying his right to entry to an assignee; or (2), similarly, by the widow, while her status as widow of the soldier continues; or (3), similarly, by the minor orphan children, during their minority, acting through their lawful guardian. In case a soldier entitled to the right dies without exercising it, leaving no widow or minor orphan children, the right to entry vests in his personal representative as personal property. If the right passes to the soldier's widow and she remarry or die without exercising it, and there be no minor children of the soldier then surviving, the right vests in the soldier's estate; but if the right passes to the minor children, it becomes absolute in them, in no way conditioned upon an appropriation by the guardian during their minority.

Residence and cultivation are not required in the location of soldiers' additional rights, either by the original beneficiary or by his assignee, no matter whether the original entry was perfected or abandoned. These rights are eagerly sought by scrip dealers, who make inquiries calculated to disclose the existence of such rights, negotiate for the purchase of assignments thereof, and, if purchase is made, sell the rights so procured to parties desiring to locate them upon vacant public lands.

All persons are cautioned against signing any assignment or affidavit in connection with the sale of these rights unless they are sure as to the truth of the statements contained therein. What those scrip dealers propose to purchase is not the land entered, but the right to make additional entry for the difference between the area of the land entered and 160 acres. Soldiers of the Civil War or their widows or heirs receiving inquiries from scrip dealers must not assume because the scrip dealer has found a record of an entry made by a person with a name merely similar to that of the soldier, or even of the same name, that the entry was in fact made by the soldier and that an additional right exists. Practically all of the letters addressed to such persons by scrip dealers are merely letters of inquiry, and it has been found that such letters of inquiry have been addressed to scores of persons having names similar to those of persons who made entries prior to June 22, 1874. For instance, scrip dealers have written to dozens of persons bearing names such as John Adams, John A. Adams, John B. Adams, John C. Adams, etc., asking whether the soldier addressed, or the husband of the widow addressed, was the same person who made an entry in the name of John Adams. It should be borne in mind that there are many persons having similar names, and that the entry may have been made by a person who was never a soldier.

This office did not maintain a general alphabetical index of the names of entrymen prior to July 1, 1908, therefore an entry made prior to that date can not be identified on the records from the name of the party. If this circular is sent in reply to an inquiry regarding an entry which has been vaguely described by some scrip dealer it is suggested that the writer of the inquiry request the scrip dealer to give a full description of the entry, by subdivision, section, township, range, and the name of the State in which the land is located, or there should be given the name of the county as well as the name of the State in which the land entered is located. Also the date or approximate date of the entry, showing at least the year in which such entry was made, or the serial number of the entry, the final certificate number, if any, and the name of the district land office, so as to enable this office to identify the entry on the records.

This office does not pass upon the question of whether or not an additional right exists in the absence of an application to locate the alleged right upon a specific tract of land which must be accompanied with a record of the military service, description of the entry made prior to June 22, 1874, competent evidence showing identity of the soldier with the entryman, that no subsequent entry has been made, and that the right has not been previously assigned. If the right is sought to be located by the assignee, appropriate evidence must be submitted showing that he is entitled thereto by assignment.

The owner of a soldiers' additional right who desires to personally exercise the same must first select a tract of land and then file formal application therefor in the district land office for the district in which the land desired is situated, accompanying the same with the evidence as to existence and ownership of the right as above indicated; or if the land desired be located in Kansas, Michigan, Mississippi, or Wisconsin, or other public-land State in which there is no district land office, the application and accompanying evidence must be filed in this office.

The required nonmineral and nonoccupancy affidavits are embodied in Form 4–008a, prescribed for soldiers' additional applications. For further information and the necessary blank forms for making such applications request should be made of the district land office for the district in which the particular tracts desired are situated, or to this office.

The purchase and sale of these rights is a private transaction in which the Government is not interested until an application is presented for a specific tract of land; therefore this office can furnish no information as to the value of such rights. The purchase price must be fixed by agreement between the parties interested. This office has no blank forms of assignment.

There is no law under which soldiers or their widows or heirs can be given 160 acres or any public land merely by reason of military service. No specific tracts of land were given to soldiers of the Civil War; the bounties given for service in that war were paid in money. The soldier's additional homestead right exists only under the circumstances stated in the first paragraph of this letter. Certain privileges are granted to soldiers, their widows, and minor orphan children in connection with the general homestead laws, but these privileges are not assignable and can only be asserted in connection with an actual entry upon vacant public land upon which they will have to meet certain requirements as to residence, cultivation, and improvements. A separate circular, No. 302, is issued on this subject.

WILLIAM SPRY, *Commissioner.*

[Reported, 52 L. D. 153]

ASSIGNMENT OF UNDIVIDED INTERESTS IN SOLDIERS' ADDITIONAL RIGHTS

Instructions

Department of the Interior,
Washington, May 13, 1927.

Finney, *First Assistant Secretary.*

The department has considered your [Commissioner of the General Land Office] letter of the 9th instant, requesting instructions as to whether or not an assignment executed by one or more, but less than all, of the surviving heirs of a soldier, who have succeeded to his soldiers' additional right, should be recognized as conveying the proportionate share or shares of the heir or heirs who executed such assignment or assignments.

It being well settled that a soldiers' additional homestead right, if not exercised or transferred by the donee, passes to his estate as other property, subject only to the exercise of the rights given by section 2307, Revised Statutes, to the widow and minor orphan children (Anderson *v.* Clune, 269 U. S. 140), it only remains to be determined whether there is any administrative objection to allowing each of the heirs, if there be more than one, to separately locate or assign his share of the right.

In the case of Edgar A. Coffin (33 L. D. 245) it was held that "the Land Department does not and can not deal with or recognize undivided interests."

The department is now of the opinion that no good reason exists for further adhering to the ruling above quoted.

Accordingly, if one claiming a portion of a soldiers' additional right as the heir of a soldier furnishes convincing proof of his heirship, the names of the other heirs, and that there are no debts due by the estate of the soldier, his application to locate his portion of the right, or an assignment thereof, will be recognized.

In this connection it should be observed that a soldiers' additional right not exercised (or assigned) by the soldier, nor by his widow during widowhood, in the absence of minor children, descends to those who are his heirs under the laws of the State of his domicile at the time of his death, and, in making proof of the undivided interest to be located or assigned, the applicant should be required to furnish evidence showing the succession in the same manner as in the case of estates generally.

STATE GRANTS AND SELECTIONS

[Reported, 30 L. D. 607]

FINAL PROOF—SCHOOL SECTIONS—NOTICE

Department of the Interior,
General Land Office,
Washington, D. C., May 15, 1901.

Registers and Receivers, United States Land Offices.

Sirs: In all cases of notice of intention to submit final proof on entries for lands embraced in sections that have been granted or reserved to the State or Territory for school purposes, you will require the entryman in the published notice to specially cite the State or Territory, and serve a copy of such notice, either personally or by registered mail, on the proper State or Territorial authorities, and furnish evidence of such service prior to or at the time of the submission of proof, as in other cases of adverse claims.

Very respectfully,

Binger Hermann, *Commissioner.*

Approved.

Thos. Ryan, *Acting Secretary.*

[Reported, 35 L. D. 581]

SCHOOL LAND—SETTLEMENT PRIOR TO SURVEY—NOTICE OF ENTRY

Department of the Interior,
General Land Office,
Washington, D. C., April 30, 1907.

Registers and Receivers, United States Land Offices.

Sirs: The circular of instructions of June 21, 1905 (33 L. D. 638), is hereby amended to read as follows:

In any case where, upon an ex parte showing of settlement prior to survey of the lands in the field, an entry is allowed under section 2275, United States Revised Statutes, as amended by act of February 28, 1891 (26 Stat. 796), of lands within a section that has been granted, reserved, or pledged for the use of schools or colleges, it will be the duty of the register to at once advise the proper State or Territorial authorities thereof by registered mail. Such notice will give the description of the land, the date of survey, the date and number of entry, the name and post-office address of the entryman, and the date of alleged settlement. A copy of the notice, together with the postmaster's receipt for the letter containing same, will be filed with the entry papers, and forwarded therewith to the General Land Office.

A State or Territory protesting against the allowance of an entry will be required to attack same by affidavit of its authorized agent, duly corroborated, as prescribed in rules 2 and 3 of practice, when it will become your duty to order a hearing to determine the respective rights of the parties (Baxter *v.* Crilly, 12 L. D. 684).

These instructions are not intended to supersede or modify, in any particular, instructions of May 15, 1901 (30 L. D. 607), requiring the citation of the State or Territory in the published notice and evidence of service at time of final proof.

Very respectfully,

R. A. Ballinger, *Commissioner.*

Approved April 30, 1907.

James Rudolph Garfield,
Secretary.

[Reported, 39 L. D. 39]

SELECTION OF LANDS BY STATES AND TERRITORIES UNDER GRANTS FOR EDUCATIONAL AND OTHER PURPOSES

Department of the Interior,
General Land Office,
Washington, D. C., June 23, 1910.[1]

1. All lands selected must be from the unappropriated nonmineral surveyed public land, within the State, or Territory, making the selection, and their nonmineral character must be shown by the affidavit of some responsible party, having and testifying to a personal knowledge of the land, and shall apply to each smallest legal subdivision of land selected.

2. The selections in any one list, under special grants, or grants in quantity, should not exceed 6,400 acres, and the selections in any one list of indemnity school lands must not in the aggregate exceed 640 acres.

3. All lists of indemnity school lands must be prepared so that each selected tract will correspond in area with the base tract, and separate base or bases must be assigned to each smallest legal subdivision of land selected.

4. The assignment of a portion of the smallest legal subdivision of a school section as the basis, in whole or in part, for indemnity selections, is permitted; but such assignment is an election by the State or Territory to take indemnity for the entire subdivision, and is a waiver of its right to such subdivision, and any remaining balance must be used for future selections.

5. The cause of the loss for which indemnity is selected must be specifically stated, whether by entry, reservation, the mineral character of the land, or the fractional condition of the township.

6. The selecting agent must file with each list of selections of indemnity school lands a certificate, showing that indemnity has not previously been granted for the assigned base lands, and that no previous selection is pending for such assigned base; and with each list of selections of lands under quantity or special grants, a certificate that the selections and those pending, together with those

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[1] See Circular No. 659, p. 1388.

approved, do not exceed the total amount granted for the purpose stated.

7. Where indemnity is sought for school lands in place, because of their inclusion within any Indian, military, or other reservation, the list of selections must, in every case, be accompanied by a certificate of the officer or officers charged with the care and disposal of school lands, that the State has not previously sold or disposed of, or contracted to sell or dispose of, any of said lands used as bases, or any part thereof; that the said lands are not in the possession of, or subject to the claim of any third party, under any law or permission of the State or Territory; and, within three months after the filing of any such list of selections, the State or Territory must, in addition, file a certificate from the recorder of deeds or official custodian of the records of transfers of real estate, in the proper county, or from a reliable and responsible abstracter or abstract company, that no instrument purporting to convey, or in any way encumber, the title to any of said lands used as bases, is of record, or on file, in the office of such custodian, and upon the report of the local officers of the failure of the State to file such certificate within the required time, any selection upon such base lands may be canceled without previous notice. No certificate from an abstracter or abstract company will be accepted until approval by the Commissioner of the General Land Office of a favorable report of the Chief of Field Division or United States district attorney whose division or district embraces the lands in question, as to the reliability and responsibility of such abstracter or company.

8. The legal fees required by law must accompany all lists of selections.

No more than one number must be given to any list of selections, notwithstanding it may contain more than one selection.

9.[2] Notice of selection of all lands must be given by publication once a week for five successive weeks in a newspaper of general circulation in the county where the lands are located, the paper to be designated by the register.

10. Notices for publication will be prepared by the register at the time of the acceptance of the selections, and will be transmitted by registered mail to the proper State or Territorial official for publication in the paper or papers designated, and a copy of such notice shall also be posted by the register in a conspicuous place in his office and remain so posted until the expiration of time allowed for the submission of proof of publication.

To save expense, the register may embrace two or more lists in one publication when it can be done consistently with the requirement of publication in a newspaper of general circulation in the county where the land is situated.

The published notice will embrace only the selected lands described by the largest legal subdivisions embraced in the separate lists, care being taken to avoid repetition of numbers of sections, townships, and ranges.

11.[2] Proof of publication will be the affidavit of the publisher or foreman of the newspaper employed that the notice (a copy of which must be annexed to the affidavit) was published in said newspaper once a week for five successive weeks. Such affidavit must show that the notice was published in the regular and entire issue of the paper and was published in the newspaper proper and not in a supplement.

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[2] See amendment, p. 1388. Also see instruction of Oct. 19, 1929, p. 1149.

The proof of publication of notice must be filed with the register within 90 days after receipt of notice for publication and will be forwarded by the register to the General Land Office with a report as to whether protest or contest has been filed against any selection, and if protest or contest is filed the same shall accompany the report. Failure by the State or Territory to furnish proof of publication within the time limited will be cause for the rejection of the selection, upon report of such failure by the register, accompanied with evidence of service of notice prescribed in rule 10.

During the period of publication, or any time thereafter, and before final approval and certification, the local officers may receive protest or contest as to any of the tracts applied for and transmit the same to the General Land Office.

Where lands sought to be selected are alleged, by way of protest, to be mineral, or where applications for patent therefor are presented under the mining laws, or are otherwise adversely claimed, proceedings in such cases will be in the nature of a contest and will be governed by the rules of practice in force in contest cases.

12. Surveyed lands of the United States, reserved or withdrawn from entry, location, and selection under the general land laws, and thereafter restored to the public domain (not under a special statute) may be selected in satisfaction of grants or reservations in aid of common schools, if of the character contemplated thereby, in such manner as shall be prescribed in the proclamations or notices of restoration. Lists of selections received by mail not more than three days prior to the day on which the lands are opened to entry, location, and selection generally will be treated as if received on the day of such opening, and will be considered as proffered after the claims of all persons present at the time of the opening of the office have been received, but a list received by mail more than three days prior to the day of the opening will be rejected as prematurely filed.

13. No application will be allowed for lands covered by an existing selection or entry, nor will any right be recognized as initiated by the tender of any such application. In any case, however, where for good and sufficient reason a selection has been held for cancellation, the State or Territory may be permitted to relinquish such selection, and with such relinquishment tender a new application for the same land. This relinquishment and application must be accompanied by a statement, under oath, of the officer or officers of the State or Territory charged with the selection of lands, showing that proper precaution was taken, in the first instance, to avoid the tender of a defective selection, and will be forwarded to the General Land Office, where the case will be considered and if the showing made is found satisfactory the relinquishment will be accepted and the new application returned for allowance as of the date of filing. The statement accompanying such relinquishment and application will be closely scrutinized and unless the utmost good faith is shown the new application will be rejected.

Amendment of indemnity school land selections by the substitution of new and valid base, in whole or in part, in place of that originally tendered, defective from any cause, may be allowed, in the discretion of the Commissioner of the General Land Office. Applications in such cases must be accompanied by a statement, under oath, of the officer or officers indicated in the paragraph next above, fully explaining the tender of the original defective base and how the error or mistake occurred, and will be forwarded to the General Land Office for consideration, where, if it is believed that every reasonable effort was made and precaution taken to avoid the tender of such defective base, the substitution of the new and valid base may be permitted in cases where no intervening claims exist.

14. The local officers will not enter on their records the relinquishment of any State selection until directed to do so by the General Land Office. All relinquishments of State selections will be forwarded to the General Land Office, through the local office, and, if accepted, the local officers will be directed to cancel the selections on their records. The cancellation will become effective as of the date of receipt of order of cancellation by the local office, after which, and not before, the land, if not reserved, will be subject to disposition under the general land laws.

15. When a school section has been identified by survey, and no claim is asserted thereto under the mining or other public land laws, the presumption is that title to the land has passed to the State, but such presumption may be overcome by the submission of satisfactory proof to the contrary.

16. The States will not be permitted to make selections in lieu of lands within a school section alleged to be mineral, in the absence of proof that such lands are known to be valuable for mineral. Such preliminary proof must show the kind of mineral discovered and the extent thereof.

17. Upon the submission by the State of an ex parte showing, consisting of corroborated affidavits, alleging that the land is valuable for mineral, accompanied with an application for indemnity in lieu of such lands, and certificates of the proper State authorities showing that said lands have not been sold, encumbered, or otherwise disposed of, as required by rule 7, the register will certify as to the date of the filing of said list, the status of the land selected, as shown by the record, and forward the list to the General Land Office by special letter, without further action.

The legal fees payable upon such selection must be tendered with the application to select, and will be received and held as unearned fees and other trust funds until the selection has been allowed, or finally rejected, and in the meantime no action will be taken looking to the disposal of the selected land.

If the showing is deemed sufficient, a hearing will be ordered by this office to determine the character of the land, evidence to be submitted in support of the allegation contained in the preliminary showing. Notice of such hearing must be given by the State, by publication, once a week for five successive weeks, in a newspaper designated by the register of the land office of the district in which the lands are situated, as published nearest to the location of such base lands, and proof that the notice was published must be filed in the local land office on or before the day of hearing.

All proof filed and testimony taken at such hearing will be forwarded to the General Land Office.

Should the proof be found sufficient, the list will be returned for allowance, when notice of selection will be published, as required by rule 9 hereof, and the State will be further required to furnish the certificate of the officer in charge of the record in the county where the lands are situated, or from a reliable and responsible abstracter or abstract company, showing that said lands have not been sold, encumbered, or otherwise disposed of, as required by rule 7.

18. A determination by the General Land Office, or the department, that a portion of the smallest legal subdivision in a school section is mineral land will place that entire subdivision in the class of lands that may be used as a basis for indemnity selection, and where mineral entry was made of any portion of the smallest legal subdivision of a school section that fact will be taken as determining the right of the State to indemnity for the entire legal subdivision upon proper showing that the State has not made any disposition of the land not embraced in such mineral entry.

19. All previous rulings and instructions not in harmony herewith are hereby vacated.

Fred Dennett, *Commissioner.*

Approved June 23, 1910.

R. A. Ballinger, *Secretary.*

[Reported, 41 L. D. 89]

Circular No. 128

SELECTIONS BY STATES OF LANDS WITHDRAWN, CLASSIFIED, OR VALUABLE FOR COAL

Department of the Interior,
General Land Office,
Washington, June 14, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is directed to the act of Congress, approved April 30, 1912 (37 Stat. 105), entitled "An act to supplement the act of June 22, 1910, entitled 'An act to provide for agricultural entries on coal lands,'" a copy of which is hereto attached.

The act of June 22, 1910 (36 Stat. 583), entitled "An act to provide for agricultural entries on coal lands," provided that the public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws by actual settlers only, the desert land law in tracts not exceeding 160 acres, to selection under section 4 of the act approved August 18, 1894 (28 Stat. 422), known as the Carey Act, and to withdrawal under the act approved June 17, 1902 (32 Stat. 388), known as the reclamation act.

By this Act, (April 30, 1912), the privileges granted in certain cases, as enumerated above, by the act of June 22, 1910, supra, are extended to the several States in making selections of lands in satisfaction of grants made by Congress. It is further provided that the Secretary of the Interior may, in his discretion, dispose of any isolated or disconnected tracts, under the laws providing for the sale of such tracts of public land. The conditions and reservations as prescribed by the former act are embodied in this act unchanged.

It will be your duty to accept, subject to future approval, selections, otherwise unobjectionable, presented by the several States in satisfaction of congressional grants, embracing lands withdrawn or classified as coal lands, or valuable for coal, if accompanied by a certificate or statement, in case of each application to select, of the officer or officers authorized to act for and in behalf of the State, to the effect that the application is made in accordance with, and subject to, the provisions and reservations of the act of June 22, 1910 (36 Stat. 583), as supplemented by the act of April 30, 1912 (37 Stat. 105).

Should the State deny the existence of coal in the land sought to be selected you will proceed in accordance with existing regulations in such cases.

In relation to selections made by some of the States, prior to the passage of this act, of lands withdrawn or classified as coal, you are informed that the department held, under date of May 18, 1912, in such a case from Wyoming (Lander, 05040) on appeal, as follows:

> The tender or filing of a school-land indemnity selection by a State in lieu of lands lost by it in place constitutes a mere offer to exchange, confers no vested right upon the selector and does not prevent the taking or withholding of the land by the United States for public uses or purposes. The transaction is not complete, nor does the right of the State vest until the acceptance and approval of the offer of exchange by the Secretary of the Interior. School indemnity selections offered by States for lands classified as coal or known to be valuable for such deposits could not, prior to April 30, 1912, be accepted or approved; but these selections offered and pending at the date of passage of the act of April 30, 1912, may, in the absence of intervening adverse rights, and upon proper election filed by the States, now be allowed and accepted as of April 30, 1912, if there be no other objection. * * *

Very respectfully,

S. V. Proudfit,
Assistant Commissioner.

(Act omitted.)

Circular No. 260

STATE SELECTIONS—CERTIFICATE REQUIRED

Department of the Interior,
General Land Office,
Washington, August 13, 1913.

Registers and Receivers, United States Land Offices.

Sirs: Beginning September 1, 1913, all lists of indemnity school land selections and selections, by States, under special grants or grants in quantity (including Carey Act selections) must be accompanied by a certificate from the selecting agent, showing that the selections are made under and pursuant to the laws of the State. This certificate may be incorporated in an appropriate place at the top of the page, in the printed form used for making such selections, or it may be made upon a separate form, and attached in a suitable manner to the list.

On and after the date above mentioned no application to select will be received or allowed by you unless accompanied by this certificate.

Very respectfully,

CLAY TALLMAN, *Commissioner*.

[Reported, 47 L. D. 257]

CIRCULAR NO. 659

REGULATIONS OF JUNE 23, 1910, AMENDED[3]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 15, 1919.

Registers and Receivers, United States Land Offices.

Pursuant to departmental decision of September 8, 1919, in State of New Mexico (47 L. D. 255), rule 9 and the first paragraph of rule 11 of the instructions of June 23, 1910 (39 L. D. 39), are hereby amended to read as follows:

> 9. Notice of selection of all lands must be given by publication in a daily or weekly newspaper of general circulation in the county where the lands are located, the paper to be designated by the register.
>
> 11. Proof of publication will be the affidavit of the publisher, or foreman of the newspaper employed, that the notice (a copy of which must be annexed to the affidavit) was published in said newspaper once a week (if a weekly paper) for 5 successive weeks, or for 30 days in a daily paper, as the case may be. Such affidavit must show that the notice was published in the regular and entire issue of every number of the paper during the period and time of publication, and that the notice was published in the newspaper proper and not in a supplement. Affidavits of publication not in conformity with these requirements will be rejected by the register and receiver.

The foregoing amendments will be effective as to all notices issued subsequent to November 1, 1919.

CLAY TALLMAN, *Commissioner*.

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 50 L. D. 572]

STATE INDEMNITY SELECTIONS—FORM OF PATENT—ACT OF APRIL 14, 1914

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 5, 1924.

THE COMMISSIONER OF THE GENERAL LAND OFFICE:

The department has considered your letter of June 30, 1924, requesting instructions as to whether the act of April 14, 1914 (38 Stat. 335), is applicable to State indemnity selections, and, if so, whether conveyance should be in form of patent or of a supplemental clear list.

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[3] See instructions of Oct. 19, 1929, p. 1149.

In the instructions of June 3, 1914 (43 L. D. 271), the department held that the act affected "all filings, locations, selections, or entries upon which patent or its equivalent has issued or may hereafter issue." The department is of opinion that the interpretation thus placed on the act should be adhered to, and that in appropriate cases of State indemnity selections you cause to be issued a patent in substantially the following form:

The United States of America, to all to whom these presents shall come, greeting:

Whereas, on __________________________, there was certified to the State of ______________________ the following described lands: ______________________ reserving to the United States all coal in said lands, and to it, or persons authorized by it, the right to prospect for, mine, and remove coal from the same upon compliance with the conditions of and subject to the limitations of the act of __________________________; and

Whereas the lands so conveyed have been subsequently classified as noncoal in character:

Now, therefore, know ye that the United States of America, in accordance with the act of Congress approved April 14, 1914 (38 Stat. 335), does hereby remise, release, and forever quitclaim unto the said State of ________________ ____________ and to its assigns all rights, title, interest, and estate to and in the above-described lands which may be vested in and possessed by it by virtue of the reservation hereinbefore mentioned and recited.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 50 L. D. 668]

SCHOOL LAND GRANT—MINERAL INDEMNITY

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, November 11, 1924.

First Assistant Secretary Finney to the Commissioner of the General Land Office.

Reference is made to your letter of September 27, 1924, recommending recognition of the right of the various States to satisfy their school grants by selection of the granted sections of land in place, subject to the reservations contained in the acts of June 22, 1910 (36 Stat. 583), April 30, 1912 (37 Stat. 105), and July 17, 1914 (38 Stat. 509), where such sections are known to be mineral, of the character defined in those acts at the time the right of the State to such sections would otherwise attach; and that in selecting such section as idemnity the State may use the same section as base.

In the grants to the States for school purposes, certain designated survey numbers of sections were mentioned, usually section 16 or 36, or both, and in some cases other designated sections. Such sections, however, do not pass to the State if known to contain mineral at the time when the grant would otherwise attach.

In order to indemnify the grant for such loss, provision was made for selection of other lands in lieu thereof. Originally, the right to select indemnity lands did not extend to tracts containing mineral, but in the acts above referred to provision was made whereby States are permitted to select lands containing coal, oil, or other minerals specified therein, subject to reservation of such mineral deposits to the United States.

The department has heretofore recognized the right of a State to select tracts in the designated sections as indemnity, subject to such reservation, where they were lost to the grant, as sections in place on account of their mineral character. See State of Utah *v.* Olson (47 L. D. 58, 65).

In making such selection it is wholly immaterial whether the self-same section selected be used as base or some other of the designated sections likewise lost as place lands. While such procedure seems to partake somewhat of the appearance of excessive formality, yet there is no authority under existing law whereby the grant may be made effective to any extent in any other manner as to mineral lands in the designated sections.

This is to confirm your view as to the propriety of the procedure outlined above.

[Reported, 52 L. D. 51]

Circular No. 1114[4]

CONFIRMATION IN STATES AND TERRITORIES OF SCHOOL LANDS CONTAINING MINERALS

Department of the Interior,
General Land Office,
Washington, March 15, 1927.

Registers, United States Land Offices, Division Inspectors, and District Cadastral Engineers:

The first paragraph of section 1 of the act of Congress approved January 25, 1927 (44 Stat. 1026), reads as follows:

> That, subject to the provisions of subsections (*a*), (*b*), and (*c*) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

The beneficiaries of this grant are the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The grant also extends to the unsurveyed school sections reserved, granted, and confirmed to the State of Florida by the act of Congress approved September 22, 1922 (42 Stat. 1017).

The additional grant thus made, subject to all the conditions in the statute making same, applies to school-section lands known to be of mineral character at the effective date thereof as hereinafter defined. It does not include school-section lands nonmineral in character, those not known to be mineral in character at time of grant, but afterwards found to contain mineral deposits, such lands not being excepted from the grants theretofore made (Wyoming et al. *v.* United States; 255 U. S. 489–500, 501), nor does it include lands in numbered school sections in lieu of or as indemnity for which lands were conveyed to the States first above named, or to the State of Florida with respect to school-section lands coming within the purview of the act of September 22, 1922, supra, prior to January 25, 1927.

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[4] See Circular No. 996, p. 1474.

Determinations heretofore made by the Secretary of the Interior or the Commissioner of the General Land Office to the effect that lands in school sections were excepted from school-land grants because of their known mineral character do not, of themselves, prevent or affect in any way the vesting of title in the States pursuant to the provisions of the statute making the additional grant.

Subsection (*a*) of section 1 of the act provides:

> That the grant of numbered mineral sections under this act shall be of the same effect as prior grants for the numbered nonmineral sections, and titles to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

Grants to the States of school lands in place (the numbered sections), of the character and status subject thereto, as a rule, are effective and operate to vest title upon the date of the approval of the statute making the grant or the date of the admission of the State into the Union, as to lands then surveyed, and as to lands thereafter surveyed upon the date of the acceptance of the survey thereof by the Commissioner of the General Land Office. (United States *v.* Morrison, 240 U. S. 192; United States *v.* Sweet, 245 U. S., 563; Wyoming et al. *v.* United States, supra.) It is held, therefore, that the grant made by the first paragraph of section 1 of the present statute, subject to the provision therein with respect to indemnity or lieu lands, to the provisions of subsections (*b*) and (*c*) of said section 1 and following the plain provisions of subsection (*a*) thereof is effective upon the date of the approval of the act (January 25, 1927) as to lands then surveyed and the survey thereof accepted by the Commissioner of the General Land Office and as to the unsurveyed school sections in the State of Florida granted to that State by the act of September 22, 1922. The grant, as to other lands thereafter surveyed, subject to the same provisions is effective upon the acceptance of the survey thereof as above indicated.

Subsection (*b*) of section 1 of the act provides:

> That the additional grant made by this act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals disposed of contrary to the provisions of this act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

The lands granted to the States by the act of January 25, 1927, and the mineral deposits therein are to be disposed of by the States in the manner prescribed in subsection (*b*) thereof, provision being made for judicial forfeiture in case of disposal of any of the lands or minerals contrary to the provisions of the act.

Subsection (*c*) of section 1 of the act provides:

> That any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes, or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska are excluded from the provisions of this act.

School-section lands included within the limits of existing reservations of or by the United States, specifically reserved for water-power purposes, or included in any suit or proceedings in the courts of the United States, prior to January 25, 1927, and all lands in the Territory of Alaska are excluded from the provisions of the act.

The words "existing reservations" as used in subsection (*c*) are construed generally and subject to specific determination in particular cases if the need therefor shall arise, as including Indian and military reservations, naval and petroleum reserves, national parks, national forests, stock driveways, reservations established under the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497), and all forms of Executive withdrawal recognized and construed by this department as reservations, existent prior to January 25, 1927.

Valid applications, claims, or rights protected by the provisions of subsection (*c*) include applications, entries, selections, locations, permits, leases, and other forms of filing, initiated or held pursuant to existing laws of the United States prior to January 25, 1927, embracing known mineral school-section lands then surveyed and otherwise within the terms of the additional grant, and as to lands thereafter surveyed, valid applications, claims, or rights so initiated or held prior to the date of the acceptance of the survey. The additional grant to the State will attach upon the effective date of the relinquishment or cancellation of any claim, so asserted, in the absence of any other valid existing claim for the land and if same be then surveyed. Should the validity of any such claim be questioned by the State, proceedings with respect thereto by protest, contest, hearing, etc., will be had in the form and manner prescribed by existing rules governing such cases. This procedure will be followed in the matter of all protests, contests, or claims filed by individuals, associations, or corporations against the States affecting school-section lands.

The present grant, like other grants in aid of public or common schools, is subject to the rights and claims of those who settle upon, with a view to homestead entry, or occupy, with a view to desert-land entry, prior to survey in the field, lands which on survey are found to be in numbered school sections.

Section 2 of the act reads as follows:

> SEC. 2. That nothing herein contained is intended or shall be held or construed to increase, diminish, or effect the rights of States under grants other than for the support of common or public schools by numbered school sections in place, and this act shall not apply to indemnity or lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections

in place lost to the State under the provisions of this or other acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

The only grants affected in any way by the provisions of the act of January 25, 1927, are those of numbered sections of land in place made to the States for the support of common or public schools. The adjudication of claims to land asserted under other grants, for indemnity or lieu lands and exchanges of lands, will proceed as heretofore, being governed by the provisions of existing laws applicable thereto. The States will be afforded full opportunity, however, if the facts and conditions are such as to authorize such action, either to assign new base in support of or to withdraw pending unapproved indemnity school land selections in support of which mineral school-section lands have been tendered as base.

Administrative order of May 26, 1926 (Circular No. 1067, not reported), suspending action on hearings and other proceedings initiated by or for the United States, not specifically directed or authorized by Congress, involving the mineral or nonmineral character of school-section lands, is hereby revoked. Pending contests, protests, or other proceedings so instituted in the Department of the Interior, its offices, or bureaus, on the ground that because of the existence of known mineral deposits therein title in and to school-section lands did not vest in the States under prior laws and grants will be considered and disposition thereof made in the light of the additional grant of known mineral lands herein discussed, subject to all the conditions and provisions of the act of January 25, 1927, making same, and in accord with these instructions.

Cadastral engineers, in reporting the completion of surveys in the field, will omit any special reference to the survey of school-section lands.

The practice, generally, of making mineral examinations of school-section lands is hereby discontinued and hereafter division inspectors will cause such examinations to be made and reports submitted only when directed to take such action, unless there are convincing reasons for believing that, as to particular tracts, examination and report should be made.

William Spry, *Commissioner*.

Approved March 15, 1927.

Hubert Work, *Secretary*.

[Reported, 52 L. D. 273]

ASSIGNMENT OF MINERAL SCHOOL SECTION LANDS AS BASE FOR INDEMNITY SELECTIONS

Department of the Interior,
Office of the Secretary,
Washington, February 1, 1928.

The Commissioner of the General Land Office.

My Dear Mr. Commissioner: On May 12, 1927, you requested instructions (*a*) as to whether, since the approval of the act of January 25, 1927 (44 Stat. 1026), a State may "assign school-section lands as base for indemnity selections by reason only of the mineral character of such school-section lands" and (*b*) whether the provisions of the act of January 25, 1927, "supersede the provisions of the act of February 28, 1891 (26 Stat. 796), authorizing the selection of lands in lieu of school-section lands mineral in character, so as to inhibit selection by and conveyance to the States of lands in lieu of school-section lands granted by the later act."

The act of January 25, 1927, provided that, subject to certain exceptions—

> the several grants to the States, of numbered sections in place for the support or in aid of public schools be, and the same are hereby, extended to embrace numbered school sections, mineral in character * * *.

Mineral lands of this character for which indemnity had been sought or received by the several States were excepted from the provisions of said act as were lands withdrawn or otherwise appropriated.

By subsection (*b*) of section 1 of the act of January 25, 1927, a specific method to be used in disposing of mineral lands granted thereunder was imposed as a condition subsequent to the grant, with a provision for forfeiture proceedings in cases of breach of this condition.

Section 2 of the act of January 25, 1927, is as follows:

> That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of States under grants other than for the support of common or public schools by numbered school sections in place, and this act shall not apply to indemnity or lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the State under the provisions of this or other acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

The grant made by the act of January 25, 1927, was a grant in praesenti and, since section 1 of this act vested title in the State to all unappropriated, unreserved mineral school sections in place, for which a State had not been indemnified, and since the States were limited, under section 2 of said act, to indemnity for mineral lands only where "lost to the State under this or other acts" it seems clear that a State may not, since the date of said act, assign school-section lands as base for indemnity selections by reason only of the mineral character of such school-section lands. They acquire title by virtue of the grant of January 25, 1927, and have no loss for which they may be indemnified. This disposes of your first inquiry.

The act of February 28, 1891, supra, extended to the States a right (which they were at liberty to exercise or forego) to surrender lands to which they had acquired title, where sections in place "are mineral lands or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States." The States making such surrenders were entitled to select and receive title to other lands of equal acreage in lieu thereof, each lieu selection to be a waiver of right to the base lands.

Examination of the school-land grants made prior to February 28, 1891, and thereafter disclose that exceptions from those grants were made wherever sections in place were "mineral land" or were "included within any Indian, military, or other reservation," or were "otherwise disposed of by the United States." It is apparent, therefore, that the purpose of the act of February 28, 1891, was to provide means whereby the United States could reacquire title to lands which, although acquired by the States, were of such kind or of such status as the grants contemplated should be withheld from said States.

It is provided in section 2 of the act of January 25, 1927, that "this act shall not apply to indemnity or lieu selections, or exchanges." This means that mineral lands may not be taken as indemnity or in lieu of surrendered or lost place lands. Said section further provides that "all existing laws governing lieu selections and exchanges are hereby continued in full force and effect."

The obvious purpose of this last provision is that the States shall not be deprived of any rights which they had under the preceding acts. It is equally clear that no added rights were intended to be conferred. It is also clear that the broad purpose of the act of January 25, 1927, when ascertained from all its provisions, was to vest in the several States, finally and irrevocably, full title to school sections in place wherever mineral values, known or potential, constituted the only bars to the operations of the previous grants made to said States. The reports, debates, and legislative history of said act support this view.

Prior to the act of January 25, 1927, a State could exchange mineral lands in school sections in place for other lands pursuant to the act of 1891, only in the comparatively small number of cases where mineral values became known after the effective date of the school-land grants. Lands in place known to be mineral prior to such dates never became the properties of the States. United States *v.* Morrison (240 U. S. 192); United States *v.* Sweet (245 U. S. 563), and hence formed no bases for exchanges. On the other hand, the courts have held that a surrender by a State of a school section of a class contemplated by the act of February 28, 1891, followed by a formally correct lieu selection, was an exercise of an option given the State by the Congress, recognition of which was mandatory as to the Land Department. California *v.* Desert Water, etc., Co. (243 U. S. 415); Payne *v.* New Mexico (255 U. S. 367); Wyoming *v.* United States (255 U. S. 489).

It will readily be seen that, if every section of mineral land to which a State acquired title, by virtue of the act of January 25, 1927, may be used as base for an exchange under the act of 1891, that the later act has vastly enlarged the scope of the former, and that a State may elect to retain title to such mineral sections as it sees fit, and as to the remainder, may make exchanges which the department must accept upon formally correct selection.

Under this view a State could seek exchanges for every acre acquired under the act of 1927, and instead of a simplification of the States' grants, and a speedy and final settlement of the question of States' titles to school sections in place, intended to be secured by the act of January 25, 1927, the adjudication of States' rights would be further projected into the future, and this purpose completely evaded.

The view that a State may exchange, under the act of 1891, mineral lands acquired under the act of 1927, is so plainly contrary to the intent and purposes of both acts as to be untenable, and in answer to your second inquiry I have to inform you that: A State may not make such a lieu selection, where mineral lands acquired by virtue of the act of January 25, 1927, are offered as the basis for the exchange.

It remains to consider the purpose and legal effect of the provision in section 2 of the act of January 25, 1927. "That existing laws governing lieu selections and exchanges are hereby continued in full force and effect" with relation to the prior rights of the State to make selections in lieu of numbered sections prescribed in the grant found in place which, since the date of attachment of the grant, have been found to be mineral in character but which were not known to be mineral at that date. As to such sections, the State's title attached as of agricultural lands, but the first proviso of section 2275, Revised Statutes, as amended in 1891, authorized the State to waive its right to such sections and to select other lands in lieu thereof. See California and Deseret Water Co., supra. But while this right of selection was accorded it was in the nature of an optional privilege in so far as the State was concerned and additional to anything found in the granting act. However phrased, it was in the interest of the United States, and to the end that a reinvestment of title might be effected with respect to lands which were not of the character intended to be granted. The Land Department had no authority to rule the State to an exercise of the option but was bound to honor it if an exchange otherwise regular was proffered by the State. Hence, it follows that in all cases where the State had made such proffer, the act of January 25, 1927, saves to it the right to have its selection completed. However, as to such selections as may have been proffered since the passage of said act, or which may hereafter be proffered, the case is different. No vested rights attach under a conditional privilege until such time as it is exercised, and until that time it may be taken away by competent authority. Hence, the question recurs as to the bearing and effect of the act of January 25, 1927, on this question. As has been already seen, the primary purpose of said act was to simplify administration of the State's school grant and to effect a final adjustment and settlement of questions of title arising thereunder. To this end a supplemental grant was made of mineral lands. Except by way of confirmation and further assurance of title, that act had no relation to and did not include mineral land so situated for the conclusive reason that these sections did not belong to the United States. The State's title thereto had attached under prior laws. On the other hand, and in view of the policy of the act, the United States had no further interest in mineral lands that already belonged to the State. Congress so enlarged the grant as to include all mineral lands, and to now hold that the State may continue to release mineral lands belonging to it under a prior grant as bases for further selection imputes to the act of Congress an utterly absurd result. Further, as a matter of statutory construction based on the language employed in said section 2 of the act, it is noted that while it "shall not apply to indemnity lieu selections or exchanges" yet the only right of indemnity saved to the State is limited to "the right hereafter to select indemnity," for numbered school sections "lost to the State," and it follows that the further provision under consideration in that same section continues in full force and effect only laws governing "lieu selections and exchanges" to satisfy losses.

It should be remembered that lands subject to or included in any valid application, claim, or right, initiated or held under any of the existing laws of the United States are excluded from the provisions of said act of 1927 and the State may in proper cases have indemnity therefor. Of such would be a valid mineral location on lands of the sections originally granted known to be mineral at the date the grant would have otherwise attached. This because to that extent the location represents a loss to the State for which it is entitled to indemnity. But mineral lands, the title to which passed to the State under any law, are not lost and no indemnity or lieu-land right remains to be satisfied. A contrary holding would permit the State to make selections in lieu of mineral lands granted to it by the act of 1927, which would reopen the whole question of the known mineral character of lands at date of that act and the attachment of rights thereunder.

Very truly yours,

E. C. FINNEY,
First Assistant Secretary.

force and effect only laws governing "lieu selections and exchanges" to satisfy losses.

It should be remembered that lands subject to or included in any valid application, claim, or right, initiated or held under any of the existing laws of the United States are excluded from the provisions of said act of 1927 and the State may in proper cases have indemnity therefor. Of such would be a valid mineral location on lands of the sections originally granted known to be mineral at the date the grant would have otherwise attached. This because to that extent the location represents a loss to the State for which it is entitled to indemnity. But mineral lands, the title to which passed to the State under any law, are not lost and no indemnity or lieu-land right remains to be satisfied. A contrary holding would permit the State to make selections in lieu of mineral lands granted to it by the act of 1927, which would reopen the whole question of the known mineral character of lands at date of that act and the attachment of rights thereunder.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

SURFACE RIGHTS [a]

[Reported, 38 L. D. 183]

INSTRUCTIONS UNDER ACT OF CONGRESS APPROVED MARCH 3, 1909, "FOR THE PROTECTION OF SURFACE RIGHTS OF ENTRYMEN"

Department of the Interior,
General Land Office,
Washington, D. C., September 7, 1909.[1]

Registers and Receivers, United States Land Offices.

Gentlemen: The circular approved March 25, 1909, of instructions, under the act of Congress of March 3, 1909 (35 Stat. 844), for the protection of surface rights of entrymen, is amended to read as follows:

THE PURPOSE OF THE ACT

1. The main purpose of the act is to protect persons who, in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may, at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein. It applies alike to locations, selections, and entries made prior to its passage and those made subsequently thereto.

The act also provides for the disposal, under the existing coal land laws, of the coal contained in such lands.

ELECTION

2. All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions

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[a] The instructions relative to selections by States of lands withdrawn, classified, or valuable for coal are contained in Circular No. 128, p. 1386; relative to homesteads on coal, oil, and gas lands in Alaska, in Circular No. 491, p. 216; and relative to the disposition of surplus coal lands restored from Indian reservations, in Circular No. 547, p. 671.

[1] Amended by circular of Nov. 21, 1912, p. 1408.

and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as hereinafter indicated.

LANDS CLASSIFIED, CLAIMED, OR REPORTED AS COAL LANDS

3. Upon receipt of these instructions registers and receivers will promptly advise, by registered mail, each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the act.

In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless at the time of hearing on final proof it shall be shown that the land is chiefly valuable for coal.

The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

NOTICE TO CHIEF OF FIELD DIVISION

4. Where the nonmineral claimant indicates his intention to contest the alleged coal character of the land involved, the chief of the appropriate field division must be advised sufficiently in advance of the date fixed for the taking of the final proof to enable him to be prepared to represent the Government at the time such final proof is made.

ACTION OF THE REGISTER AND RECEIVER

5. In every case where there is controversy as to the coal character of the land, and evidence is offered thereon, the register and receiver will forward the testimony and other papers to the Commissioner of the General Land Office, with appropriate recommendation, notice of which should be given the claimant.

WHERE FINAL PROOF HAS ALREADY BEEN SUBMITTED

6. Where satisfactory final proof has heretofore been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, and that the claimant knew that fact at the time of making final proof, the

entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

DISPOSAL OF THE COAL DEPOSITS

7.[2] Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be prospected for, mined, and removed under the existing coal-land laws, provided the person desiring so to do first procures the consent of the surface owner, or furnishes such security for payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction. But no coal declaratory statement or application to purchase under sections 2347–2352 of the Revised Statutes, and the regulations of this office, will be received until the nonmineral claimant, upon the making of satisfactory proof, has elected to take a patent containing the prescribed reservation, and not then unless such coal declaratory statement or application to purchase is accompanied by the consent of the surface owner, or evidence showing that security has been given as prescribed by the act.

Appeals shall be allowed in all proceedings brought hereunder as in other cases.

CERTIFICATES AND PATENTS

8. Coal declaratory statements, certificates, and patents issued under the provisions of this act will describe the land by legal subdivisions as under the general coal-land laws, and payment will be made at the price fixed for the whole area, but appropriate conditions and limitations will be incorporated in the patent fully defining the interests and rights of the respective parties. To this end you will note on each coal receipt and certificate issued by you, in pursuance thereof, the words " Patent will contain conditions and limitations of the act of March 3, 1909 (35 Stat. 844)."

Very respectfully,

S. V. Proudfit,
Acting Commissioner.

Approved.

R. A. Ballinger, *Secretary.*

(Act and form omitted.)

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[2] See amendment, p. 1408.

[Reported, 39 L. D. 179]

INSTRUCTIONS UNDER THE ACT APPROVED JUNE 22, 1910 (36 STAT. 583), "TO PROVIDE FOR AGRICULTURAL ENTRIES ON COAL LANDS," WITH AMENDMENT OF SEPTEMBER 27, 1910

Department of the Interior,
General Land Office,
Washington, September 8, 1910.[3]

Registers and Receivers, United States Land Offices:

The following instructions are issued for your guidance in the administration of the act of Congress approved June 22, 1910 (36 Stat. 583), "An act to provide for agricultural entries on coal lands," a copy of which is appended hereto.

THE PURPOSE OF THE ACT

1. This act was not designed to operate as an implied repeal of any provision of the act of March 3, 1909 (35 Stat. 844). There is no inconsistency between the two acts, and both of them may have harmonious operation within their proper spheres. The earlier law provides a remedy in those cases in which entries, locations, and selections have been or may be made for lands which, subsequently to entry, location, or selection, have been, or may be, claimed, classified, or reported as being valuable for coal, while the later act permits dispositions (therein named) to be made of lands valuable for coal, notwithstanding that they may have been previously withdrawn, or classified as such. The proviso to section 1 of the later act also affords relief to those persons who, prior to June 22, 1910, in good faith made entries, locations, or selections of lands which, at the date of such entries, locations, or selections, had been withdrawn or classified, as valuable for coal.

LANDS TO WHICH THE ACT IS APPLICABLE

2.[4] The act applies to unreserved public lands of the United States in those States and Territories in which the coal land laws are applicable, exclusive of the District of Alaska, which have been withdrawn from coal entry and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified. It does not change, repeal, or modify agreements or treaties made with Indian tribes for the disposition of their lands, or apply to lands ceded to the United States to be disposed of for the benefit of such tribes.

CLASSES OF ENTRIES

3. Original entries made under the provisions of the act or validated and confirmed thereby.

(*a*) Section 1 of the act provides that from and after its passage, the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, by actual settlers only, the desert land law, selection under section 4 of the act approved August 18, 1894, known as the Carey Act, and to withdrawal under the act approved June 17, 1902, known as the reclamation act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; but that no desert-land entry made under the provisions of this act shall contain more than 160 acres, and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the act approved February 19, 1909, entitled "An act to provide for an enlarged homestead."

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[3] Amended by circulars of Jan. 23, 1911, p. 1407, and Nov. 7, 1914 (No. 362), p. 367.
[4] See amendment, p. 1407.

Section 2 of the act provides that any person desiring to make entry under the homestead laws or the desert land law, any State desiring to make selection under section 4 of the act of August 18, 1894, known as the Carey Act, and the Secretary of the Interior in withdrawing under the reclamation act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

With reference to homestead entries made under the provisions of this act, attention is called to the fact that the said act of February 19, 1909 (subject to which, as to residence and cultivation, such homestead entries must be made), provides that " no entry made under this act shall be commuted " (35 Stat. 639). This, then, requires a residence for the full period of five years to entitle the homesteader to patent thereunder. The latter act also provides that in addition to the proofs and affidavits required under section 2291 of the Revised Statutes the entryman shall prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops, other than native grasses, beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

(*b*) Nonmineral entries, selections, or locations initiated prior to the passage of the act.

In the proviso to section 1 it is enacted that those who have initiated nonmineral entries, selections, or locations in good faith, prior to the passage of this act, on lands withdrawn or classified as coal lands, may perfect the same under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act.

Upon receipt of these instructions, registers and receivers will promptly advise, by registered mail, all those who have initiated nonmineral entries, selections, or locations, prior to the passage of this act, on lands withdrawn or classified as coal lands prior to entry, selection, or location, which have not been restored to entry under the general land laws, that they may perfect such nonmineral entries, selections, or locations (if made in good faith) under the provisions of the laws under which said entries were made, but shall receive the limited patent provided for in this act, unless the lands are restored to entry under the general land laws prior to final action upon such entries, selections, or locations, or unless, within 30 days from receipt of such notice, in cases where final proofs have been made, or prior to final proof where such proofs have not been submitted, they submit evidence, preferably the sworn statements of experts or practical miners, that the land is, in fact, not coal in character, together with an application for classification, if the land is merely withdrawn, or for reclassification if classified as coal land. The application and evidence will be by you transmitted to this office and follow the procedure prescribed in section 5, paragraph 2, of these instructions.

NOTICE TO CHIEF OF FIELD DIVISION

4. Nothing herein shall change the procedure of forwarding to the proper chief of field division and the proper officers in charge of the national forest (if in such a forest) a copy of all applications to make final proof, final entry, or to purchase public lands, for the indorsement of "protest" or "no protest," as provided for in the circular of April 24, 1907, paragraph 5 et seq., except that where the only charge against the same in the office of the Chief of Field Division is that the land is coal in character, it will be unnecessary for him to protest same or make investigation, in view of the provisions of the act.

HEARING TO DISPROVE CLASSIFICATION

5. The last proviso to section 3 of the act provides that nothing in the act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

Except in the case of those who present applications under section 2 of the act, you will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the sworn statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified .the application will be rejected. Such applications will be given proper serial numbers and notation therof made upon the records, and when accompanied by the necessary evidence they will be forwarded to the General Land Office for action, where, if upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be returned for allowance. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the act.

DISPOSAL OF COAL DEPOSITS

6. *Right to prospect for coal—Bond to be filed.*—By section 3 of the act it is provided that upon satisfactory proof of full compliance with the provisions of the laws under which entry is made, and of this act, the entryman shall be entitled to a patent to the land entered by him, which patent shall contain a reservation to the United States of all the coal in the land so patented, together with the right to prospect for, mine, and remove the same; and that the coal deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal-land laws in force at the time of such disposal. Said section 3 also provides that any person qualified to acquire coal deposits or the right to mine and remove the coal under the laws of the United States shall have the right, at all times, to enter upon the lands selected, entered, or patented, as provided by this act, for the purpose of prospecting for coal thereon upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting; and that any person who has acquired from the United States the coal deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal therefrom, and mine and remove the coal, upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages.

[5] As a condition precedent to the exercise of the right mentioned in this act to prospect for coal, the person desiring so to prospect must file in the office of the Commissioner of the General Land Office, for submission to the Secretary of the Interior for his approval, a bond or undertaking to indemnify the nonmineral claimant in lawful possession under this act from all damages that may accrue to the latter's crops and improvements on such lands by reason of such prospecting, the right to prospect to date from receipt of notice of approval of the bond. There must be filed with such bond evidence of service of a copy thereof upon the nonmineral claimant. The bond must be executed by the prospector as principal, with two competent sureties or a bond company that has complied with the provisions of the act of August 13, 1894 (28 Stat. 279), as amended by the act approved March 23, 1910 (36 Stat. 241), in the sum of $1,000, as per form hereto annexed. Coal declaratory statements for and applications to purchase the coal deposits in lands entered, selected, or withdrawn under the reclamation act, as provided in section 2 of act,

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[5] See amendment, p. 367.

will be received and filed at any time after such entry or selection has been received and allowed of record or such withdrawal has become a matter of record in your office; coal declaratory statements for and applications to purchase the coal deposits in those lands embraced in nonmineral entries, selections, or locations made in good faith, described in, and protected by, the proviso in section 1 of the act, will be accepted and filed after it shall have been determined and become a matter of record in your office that such nonmineral entryman, selector, or locator shall receive the limited patent prescribed in the act: *Provided always*, That such lands, or the coal deposits therein, have then been restored to disposition under the coal-land laws and the regulations in force.

APPLICATIONS, CERTIFICATES, AND PATENTS

7. (*a*) Entries and selections under the provisions of this act must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to you, the following:

> Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

Like notation will be made by you across the face of the notice of allowance (Form 4—279) issued on applications to enter or select lands under the provisions of this act. (Amendment of September 27, 1910.)

The Secretary of the Interior in withdrawing, under the reclamation act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the act of June 22, 1910, supra.

(*b*) You will cause to be stamped on the final certificate issued to non-mineral claimants under this act—

> Patent to contain provisions, reservations, conditions, and limitations of act of June 22, 1910 (36 Stat. 583).

There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the act of June 22, 1910 (36 Stat. 583).

Immediately upon the notation upon your records of the filing and allowance of an entry, Carey Act selection, or a reclamation withdrawal under section 2 of the act, and upon the ascertainment, (which will be noted of record), that the nonmineral entryman, selector, or locator mentioned in and protected by the proviso in section 1 of the act shall receive the limited patent prescribed therein, you will stamp on the tract book, on the same line with the entry and as near the descriptions as practicable, " Coal reserved to the United States, act of June 22, 1910." You will also write on the margin of the plat under the heading " Coal reserved to the United States, act of June

22, 1910," the description of the land in which the coal deposit has been reserved.

(*c*) Coal declaratory statements, applications to purchase, certificates, and patents issued under the provisions of this act will describe the coal within legal subdivisions, and payment will be made at the price fixed for the whole acreage. Coal declaratory statements and applications to purchase under sections 2347–2352, Revised Statutes, for coal deposits disposable under this act, must have noted across the face of same, before such coal declaratory statements or applications to purchase are signed by the coal claimants and presented to you, the words—

> Patent will convey only the coal in the land and rights incident thereto in accordance with the conditions and limitations of the act of June 22, 1910 (36 Stat. 583).

You will make like notation on each coal entry, final certificate, and notice of allowance issued by you for coal deposits disposable under this act. (Amendment of September 27, 1910.)

There will be incorporated in patents to coal claimants for coal deposits disposed of under this act substantially the following words:

Now know ye, that there is, therefore, pursuant to the law aforesaid, hereby granted by the United States unto the said grantee and to the heirs or successors and assigns of said grantee all the coal and the coal deposits in the land above described, together with the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions of and subject to the limitations of the act of June 22, 1910 (36 Stat. 583), entitled "An act to provide for agricultural entries on coal lands."

Protests, contests, appeals, and other proceedings arising under these regulations and the act shall be allowed and disposed of in accordance with the Rules of Practice.

Fred Dennett, *Commissioner.*

Approved.

Frank Pierce, *Acting Secretary.*

(Act and form omitted.)

[Reported, 39 L. D. 473]

COAL LANDS—AGRICULTURAL ENTRIES—ACT JUNE 22, 1910

Department of the Interior,
Washington, D. C., January 23, 1911.

The Commissioner of the General Land Office.

Sir: Paragraph 2 of the regulations issued September 8, 1910 (39 L. D. 179), under the act of June 22, 1910 (36 Stat. 583), is hereby modified to read as follows:

> The act applies to unreserved public lands of the United States in those States and Territories in which the coal land laws are applicable, exclusive of the District of Alaska, which have been withdrawn from coal entry and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.

You are instructed to reconsider all cases in which action has been taken adverse to applicants or entrymen pursuant to that part of said paragraph which is eliminated by this order, unless otherwise foreclosed.

Very respectfully,

R. A. Ballinger, *Secretary.*

[Reported, 41 L. D. 358]

COAL LANDS—SURFACE PATENT—PROSPECTING

Department of the Interior,
Washington, November 21, 1912.

The Commissioner of the General Land Office.

Sir: Paragraph 7 of the circular of September 7, 1909 (38 L. D. 183, 185), pursuant to act of March 3, 1909 (35 Stat. 884), is hereby amended so as to read as follows:

> 7. Where election to accept patent with the prescribed reservation has been made by the nonmineral claimant, coal deposits in the land may be prospected for mined, and removed under the existing coal land laws, provided the person desiring so to do first procures the consent of the surface owner, or furnishes such security for payment of all damages to such owner caused thereby as may be determined by a court of competent jurisdiction. But no coal declaratory statement or application to purchase under sections 2347–2352 of the Revised Statutes, and the regulations of this office, will be received until the nonmineral claimant has elected to take a patent containing the prescribed reservation.
>
> Appeals shall be allowed in all proceedings brought hereunder as in other cases.

Very respectfully,

Samuel Adams,
First Assistant Secretary.

[Reported, 44 L. D. 32]

Circular No. 393 [6]

REGULATIONS UNDER THE ACT OF JULY 17, 1914 (38 STAT. 509), PROVIDING FOR AGRICULTURAL ENTRIES ON PHOSPHATE, OIL, AND CERTAIN OTHER MINERAL LANDS

Department of the Interior,
General Land Office,
Washington, D. C., March 20, 1915.

Registers and Receivers, United States Land Offices (exclusive of Alaska).

Sirs: The following regulations are for the guidance of yourselves and the public in matters affected by the act of Congress approved July 17, 1914 (38 Stat. 509), entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals," a copy of which is hereto appended.

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[6] Amended by Circular No. 481, p. 1413.

SCOPE OF THE ACT

(1) The legislation is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the Territory of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act, July 17, 1914, will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.

(2) Section 1 of the act authorizes the appropriation, location, selection, entry, or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made. The only exception is that no desert land entry made under the act shall contain more than 160 acres.

The term " person " used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L. D. 245), or other corporation, or an association when duly qualified.

Under the proviso in section 2 of the act applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservation; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(3) This act in many respects resembles that of March 3, 1909 (35 Stat. 844), which provides for the protection of the surface rights of entryman upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these

acts of September 7, 1909 (38 L. D. 183); September 8, 1910 (39 L. D. 179); May 23, 1912 (41 L. D. 30)[b]; and June 14, 1912 (41 L. D. 89), may be followed, so far as applicable, in matters of practice and procedure not specifically covered by these regulations.

(4) Section 3 of the act is both retrospective and prospective, and under it any person who prior to the act, had applied, or who after the passage of the act, shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available, may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909, above referred to, and the disposition of such cases will follow the practice under that act in so far as the same is applicable.

APPLICATIONS

(5) All applications to locate, select, enter, or purchase lands under this act, before being accepted and filed by you, must have written, stamped, or printed upon their face the following:

> Application made in accordance with, and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

Like notations will be made by registers upon the face of the notices of allowance issued on applications filed under this act.

Orders of withdrawal under the reclamation act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

FINAL CERTIFICATES AND PATENTS

(6) Final certificates issued to nonmineral claimants under this act will contain the following provision, which you will cause to be written or stamped thereon:

> Patent to contain provisions, reservations, conditions, and limitations of the act of July 17, 1914 (38 Stat. 509).

There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat. 509).

NOTATION OF RECORDS

(7) Upon the acceptance by you of any filing under this act, you will make appropriate notation of your records to show that the

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[b] The instructions of May 23, 1912 (41 L. D. 30), relate to isolated tracts of coal lands. For later instructions, see Circular No. 684, p. 747.

filing was made under the provisions thereof; and upon the ascertainment (which will be noted of record) that the nonmineral locator, selector, entryman, or purchaser whose filing falls within the provisions of section 3 of the act, shall receive the limited patent prescribed therein, you will cause to be written or stamped on your tract books, in line with the notation of the entry and as near the description as practicable that the mineral deposits (phosphate, oil, etc., as the case may be) are reserved to the United States, act of July 17, 1914. You will make a similar notation on the margin of the township plat, giving description of the land in which the deposits have been reserved.

RESERVED MINERAL DEPOSITS

(8) The act provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Although provisions are made in the act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits, these provisions can have no operation or effect until further legislation by Congress shall authorize disposition of the reserved mineral deposits and define the qualifications of those who may acquire such deposits. In the meantime there is no right to prospect, and no right to acquire such deposits can be in any way initiated.

CLAIMANTS OF LANDS SUBSEQUENTLY WITHDRAWN

(9)[7] The enactment of the law itself and the publicity given to orders of withdrawal and classifications and the notation of the same upon the records of the local offices, will be sufficient notice to such nonmineral claimants as are or may be affected by withdrawals or classifications made, or which shall be made, subsequent to their locations, selections, entries, or purchases, that they must take the limited patent prescribed by the act, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral.

APPLICATIONS TO DISPROVE CLASSIFICATIONS

(10) (a) The proviso to section 2 of the act allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the sworn statements of experts or

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[7] See amendment, p. 1413.

practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act, and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by you, and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

Such applications will be given proper serial numbers, noted upon your records, and forwarded, together with the request for classification and the evidence submitted therewith, to the General Land Office for action.

If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be returned for allowance.

If the application be denied, you will be so notified, and the applicant may, within 30 days from notice of such denial, apply to your office for a hearing to disprove the classification. When a hearing is applied for, you will notify the chief of field division and proceed therewith under the Rules of Practice. If the applicant fail to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(b) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

Claimants to whom this provision is applicable may, therefore, file in the proper local land office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification whereupon the same will be forwarded to the General Land Office for action. If as a result thereof the land be restored to entry, if withdrawn, or classified as nonmineral, if classified, you will be so informed, in order that you may note your records and advise the claimant. If the application be denied, you will be advised thereof, and the claimant allowed 30 days from notice of such denial within which to make application to your office for a hearing to establish the nonmineral character of the land. When a hearing is applied for you will notify the chief of field division and proceed therewith under the Rules of Practice.

BURDEN OF PROOF

11. Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in this act and in these regulations, the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. See Charles W. Pelham (39 L. D. 201).

Clay Tallman, *Commissioner.*

Approved.

Andrieus A. Jones,
First Assistant Secretary.

(Act omitted.)

Circular No. 481

AMENDMENT OF REGULATIONS UNDER ACT OF JULY 17, 1914 (38 STAT. 509)

Department of the Interior,
General Land Office,
Washington, June 27, 1916.

Registers and Receivers, United States Land Offices
(*exclusive of Alaska*).

Sirs: Under date of April 28, 1916, the department amended paragraph 9 of the regulations under the act of July 17, 1914 (38 Stat. 509), providing for agricultural entries of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals (Circular No. 393, 44 L. D. 32), so as to read as follows:

> (9) Nonmineral claimants who are or may be affected by withdrawals or classifications made, or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall

be entitled to the patent authorized to be issued by section 3 of the act upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.

The effect of the amendment is to provide that patent with mineral reservation will issue only upon application, or with the express consent, of the claimant, and upon his failure to respond in proceedings under these regulations involving final proof or final entry, the location, entry, selection, or purchase will be canceled.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

[Reported, 48 L. D. 629]

EFFECT OF LEASING LAW IN CERTAIN STATES RESPECTING SHOWING TO BE MADE BY NONMINERAL CLAIMANTS

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 8, 1922.[8]

The COMMISSIONER OF THE GENERAL LAND OFFICE:

The proposed instructions, requiring a nonmineral showing with respect to potash, coal, phosphate, oil shale, gas, and sodium, in connection with the disposition of public lands in Alabama, Kansas, Michigan, Minnesota, Missouri, Oklahoma, and Wisconsin, submitted by your office for departmental approval, have had careful consideration.

While the department entertains no doubt that Congress intended to make and did make, by the acts of October 2, 1917 (40 Stat. 297), and February 25, 1920 (41 Stat. 437), all of the minerals named, owned by the United States, subject to disposition as provided in said acts, it is not believed that the situation is such as to call for any change in the existing forms or practice, as to the States referred to. If, in any case arising in those States, there is a claim, classification or report that the lands are valuable for the minerals in question, the nonmineral claimant should be required to make such showing or waiver as the facts may warrant.

The instructions are returned herewith, without approval.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 166]

RECITALS IN SURFACE PATENTS ISSUED SUBJECT TO THE CONDITIONS OF SECTION 29 OF THE ACT OF FEBRUARY 25, 1920 [c]

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
Washington, July 2, 1925.

FINNEY, *First Assistant Secretary:*

I have before me your [Commissioner of the General Land Office] letter of June 23, 1925, requesting instructions as to whether patents issued with mineral reservations pursuant to the act of July 17, 1914 (38 Stat. 509), should, in appropriate cases, contain a statement that the entry was patented subject to the prior rights of oil and gas permittees or lessees, pursuant to section 29 of the general leasing act of February 25, 1920 (41 Stat. 437).

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[8] See instructions of May 14, 1929, p. 1421.

[c] On Dec. 3, 1929, the department approved a recommendation of the Commissioner of the General Land Office that the reference to section 29 of the leasing act "should be omitted from all final certificates and patents based thereon where it is shown that the oil and gas claim has been finally eliminated."

Section 29 of the leasing act authorizes, in the discretion of the Secretary, the disposal under nonmineral-land laws of such of the surface of lands leased under the provisions of the act of February 25, 1920, as is not necessary to the operations of the lessees.

The term " lease " used in section 29 of the act has been construed as including prospecting permits issued under the act (Instructions of October 6, 1920, 47 L. D. 474), and the surface entries allowable under this section are nonmineral entries pursuant to the acts of July 17, 1914 (38 Stat. 509), and December 29, 1916 (39 Stat. 862). Instructions of September 23, 1924 (50 L. D. 640). As these nonmineral entries are wholly subordinate to the prior rights of permittees or lessees, the entrymen are without those rights to compensation for damages to crops or improvements which occur through proper mining operations by permittees or lessees which they would have had under the nonmineral-land laws. Under the practice in force an expressed waiver of compensation for such damages is required. This waiver, however, is a mere administrative means of informing the entrymen of their rights (Pace *v.* Carstarphen et al., 50 L. D. 369). As to entries made under the act of July 17, 1914, no right to compensation was required (Pace *v.* Carstarphen et al., supra), and in the case of entries under the act of December 29, 1916, supra, the compensation provision of section 9 of that act was modified by section 29 of the general leasing act. Carlin *v.* Cassriel, (50 L. D. 383).

There can be no allowance of nonmineral entries of lands already included in prospecting permits or leases under the act of February 25, 1920 (41 Stat. 437), except in the exercise of the discretion vested in the Secretary by section 29 of that act, and it is therefore apparent that a statement that such allowance has been made must appear in the record and in the final certificate.

As section 29 of the act is one of the essential provisions under which nonmineral entries in these special cases are made, reference to that section as part of the source of the entry should appear in the patent. This is true even though the prospecting permit or lease which antedated the nonmineral filing has been canceled before patent issues. This requirement is made to show the true source of authority for the entry, but the reference to section 29 of the act should also state that the entry is subject to the rights of the prior permittees or lessees to use so much of the surface of the area patented as is required for mining operations, without compensation to the entrymen or patentee for damages to crops and improvements resulting from proper mining operations. If this is done, the entrymen and their assigns will be at all times chargeable with notice of their rights, through expressed limitations founded upon the law and set forth in their grants.

[Reported, 51 L. D. 167]

CIRCULAR No. 1021 [9]

INSTRUCTIONS AS TO ACTION ON NONMINERAL APPLICATIONS FILED SUBSEQUENT TO APPLICATIONS FOR PROSPECTING PERMITS OR LEASES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 21, 1925.

Registers, United States Land Offices.

GENTLEMEN: In all cases of applications to make nonmineral entries or selections of lands outside of areas which have been designated by the department as within the geologic structures of producing oil or gas fields and which lands are also embraced in applications for oil and gas prospecting permits or in permits granted, or in applications for coal, phosphate, sodium, oil shale, or potash permits or leases, or in permits or leases granted, such nonmineral applications should be received, noted upon your records, and the applicant for prospecting permit, or the permittee or lessee, as the case may be, advised that he will be allowed 30 days in which to show why the nonmineral application should not be allowed subject to the reservation to the United States of the minerals sought to be acquired by the mineral claimant, and with a waiver of claim to compensation in accordance with section 29 of the act of February 25, 1920 (41 Stat. 437), except in the case of applications for potash permits or leases or permits or leases granted, in which case the waiver should be in accordance with section 6 of the act of October 2, 1917 (40 Stat. 297), which showing must bear evidence of service of notice on the nonmineral applicant.

At the same time you will allow the nonmineral applicant 30 days to file the reservation and waiver mentioned, if he has not already done so, witnessed by two persons or acknowledged before an officer authorized to take acknowledgments, or to appeal, and advise him that if he fails to do either, his application will be finally rejected and the case closed.

The waiver of claim for compensation should be in the following form:

> Subject to the right of any permittee or lessee under any permit or lease which has been or may hereafter be granted to prospect for the minerals sought on the land in conflict where the right of such permittee or lessee was initiated prior to the nonmineral filing, and to use so much of the surface thereof as may be necessary in prospecting for, mining and removing the mineral deposits without compensation to the nonmineral claimant therefor, in accordance with section 29 of the act of February 25, 1920, or section 6 of the act of October 2, 1917 (40 Stat. 297), if applicable.

If the nonmineral application was not made under the stock raising homestead law, the reservation for coal should be under the act of June 22, 1910 (36 Stat. 583), and for the other minerals, under the act of July 17, 1914 (38 Stat. 509).

Immediately upon the expiration of the time allowed, you will forward all papers to this office with the evidence of service on each of the persons involved with your report. You will not allow any such nonmineral application until instructed by this office.[10]

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[9] Modified by Circulars Nos. 1031, p. 1418, and 1136, p. 1418.

You will submit to this office for instructions without taking action as above directed:

(A)[11] Homestead applications in which priority is claimed by reason of prior settlement over mineral claimants having prior applications for the same land, and—

(B)[11] Homestead applications, except stock-raising applications, which conflict in part only with prior applications for oil and gas prospecting permits or permits granted.

In cases coming under paragraph (B), an appropriate mineral waiver and consent covering all the lands applied for will be required by this office if it be ascertained by report from the Geological Survey or otherwise that at the date of the application all the lands applied for were known to be prospectively valuable for oil and gas.

An applicant under the reclamation act of June 17, 1902 (32 Stat. 388), for lands applied for under the leasing act after withdrawal for reclamation purposes, will be required to consent to a reservation to the United States of the proper mineral deposits as above indicated, but will not be required to consent under section 29 of the leasing act, as he will be regarded as having succeeded to the prior rights of the United States in connection with the project. For this reason also it will not be necessary for you to send notice of the conflict to the mineral claimant. An application under the reclamation act in conflict as above indicated may be allowed without reference to this office, provided the applicant has consented to a reservation of the mineral deposits as required, and, provided also, reference to this office is not necessary under paragraph (B) above.

Where an area under lease is wholly or in part best adapted to mining by stripping methods, resulting in the surface being of purely temporary value, and it is satisfactorily shown that the granting of any additional surface rights over and above those of the lessee would be a serious embarrassment to the lessee, an application to make surface entry will be rejected by this office subject to appeal.[12]

You will reject, subject to appeal, all nonmineral applications for lands covered by oil and gas leases pursuant to the departmental decision of October 6, 1922 (49 L. D. 312), in the case of Oscar R. Lingo.

These instructions supersede instructions of October 6, 1920 (47 L. D. 474), in so far as they are in conflict herewith.

Very respectfully,

William Spry, *Commissioner.*

Approved July 21, 1925.

E. C. Finney,
First Assistant Secretary.

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[10] See modification, p. 1418.

[11] See amendment, p. 1419.

[12] See added provision, p. 1418.

[Reported, 51 L. D. 202]

CIRCULAR 1031

INSTRUCTIONS—CIRCULAR 1021 MODIFIED

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 17, 1925.

Registers, United States Land Offices.

GENTLEMEN: Circular No. 1021, approved July 21, 1925, containing instructions as to action on nonmineral applications filed subsequent to applications for prospecting permits or leases, is hereby modified by the insertion therein—immediately preceding the penultimate paragraph thereof—of the following additional provision:

> Where a mineral lessee or permittee shows cause or protests against the allowance of a nonmineral entry or selection with proper mineral reservation and upon which waiver of compensation has been filed, the showing or protest shall be forwarded by the General Land Office with the application to make nonmineral entry or selection, to the Geological Survey for report and recommendation as to whether or not the granting of any additional surface rights over and above those of the lessee or permittee, as the case may be, would seriously or substantially embarrass or hinder such lessee or permittee in his operations.

If the Geological Survey shall conclude and report that the granting of additional surface rights to a nonmineral entryman or selector will so embarrass and hinder the mineral lessee or permittee in conducting operations under his lease or permit, as the case may be, then the General Land Office will reject the nonmineral filing, but if the report and conclusion of the Geological Survey shall be to the contrary then the entry or selection may be allowed

E. C. FINNEY, *First Assistant Secretary.*

[Reported, 52 L. D. 241]

CIRCULAR NO. 1136

MODIFICATION AS TO DESERT-LAND APPLICATIONS OF CIRCULAR NO. 1021 (51 L. D. 167), RELATING TO PROCEDURE UPON NONMINERAL APPLICATIONS FILED SUBSEQUENT TO APPLICATIONS FOR PROSPECTING PERMITS AND LEASES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 20, 1927.

Registers, United States Land Offices:

Paragraph 5 of instructions of July 21, 1925 (Circular No. 1021, 51 L. D. 167), which reads as follows:

> Immediately upon the expiration of the time allowed you will forward all papers to this office with evidence of service on each of the persons involved with your report. You will not allow any such nonmineral application until instructed by this office—

is hereby modified as to the desert-land applications in conflict with applications for prospecting permits or permits granted. In the case of such applications you will proceed in accordance with the instructions preceding paragraph 5 of said Circular No. 1021, and if all requirements shall have been satisfactorily complied with, you will refer the applications to the division inspector as directed by section 13 of the desert-land regulations (Circular No. 474, 50 L. D. 450 [d]).

Paragraph 6 of said Circular No. 1021 is hereby amended to read as follows:

> (*a*) Homestead applications in which priority is claimed by reason of prior settlement and desert-land applications where preference rights are claimed under the act of March 28, 1908 (35 Stat. 52), over mineral claimants having prior applications for the land; and
>
> (*b*) Homestead applications (except stock-raising applications) and desert-land applications, which conflict in part only with prior applications for oil and gas prospecting permits, or permits granted.

William Spry, *Commissioner.*

Approved December 20, 1927.

E. C. Finney,
First Assistant Secretary.

CONFLICTS BETWEEN NONMINERAL AND OIL AND GAS CASES

Department of the Interior,
General Land Office,
Washington, April 6, 1929.

Chiefs of Divisions:

You will be governed in the matter of conflicts between nonmineral cases and oil and gas cases by the following procedure:

1. All canceled oil and gas cases should be returned to D files.

2. Conflicts between nonmineral applications and applications for coal prospecting permits, or coal permits or leases, should be disposed of in the usual way.

3. Regarding conflicts with oil and gas cases, the practice is partly changed to meet the new policy of oil conservation.

4. In the case of conflict between nonmineral claims and oil and gas applications or permits, where under the former practice, further notice of any kind to the mineral claimant would be necessary and (1) permit has not been granted, (2) permit granted and over 6 months old without an extension of time, and (3) permittee granted an extension but same expired or practically so, the oil and gas case should be referred to division N for action with memorandum as provided by paragraph 7 hereof, with request that the division be advised of final action taken through division N.

5. Nonmineral applications in conflict with oil and gas cases, where the nonmineral applicant has given necessary mineral reservation and section 29 waiver, and the oil and gas party has been afforded an opportunity to object to the allowance of the nonmineral application and has not done so, the practice of returning the nonmineral applications to the register for allowance in the absence of other objections, is to be continued.

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[d] Circular No. 474, 50 L. D. 443, has been superseded by Circular No. 474 of Dec. 18, 1928. See section 13 of the latter circular, p. 422.

6. If the nonmineral application is received on the applicant's appeal from the register's requirement of additional evidence because of the oil and gas conflict, the register should be affirmed, if all else is regular, subject to further right of appeal, if the oil and gas case still subsists, notwithstanding the oil and gas case may be subject to adverse action.

7. If the oil and gas party protests against the allowance of the nonmineral application with mineral reservation and section 29 waiver, the same should be disposed of in the usual way in accordance with Circular No. 1031, or where additional evidence of some sort is necessary of the oil and gas man, the usual practice should also be followed, unless the conflicting oil and gas case has the status calling for adverse action thereon, in which event the oil and gas case should be referred to division N with memorandum requesting that action be taken thereon, and division in interest be advised when final disposition is made in order that appropriate action may be taken on the conflicting case held in that division.

8. Where a nonmineral case, including public sale cases, is pending for action and division O reports the land involved to have been at one time embraced in an oil and gas case which has failed, the office is put on inquiry as to the oil and gas character of the land and the practice already in vogue in the divisions should be continued of drawing the canceled oil and gas case to see if the failure of the oil and gas case was due to a report from the Geological Survey to the effect that the land had no prospective value for oil and gas. If due to other reasons, then a call should be made on the Geological Survey, after stating all relevant facts, for a report as to whether or not the land has, at least, a prospective value for oil and gas. If the Geological Survey has reported or does report that the land is so valuable, such report is a sufficient basis for calling on the nonmineral applicant for a mineral reservation under the act of July 17, 1914.

9. When Division N reports the oil and gas case sent to that division as having been finally closed out, the section 29 waiver from the nonmineral claimant is no longer necessary, and if furnished should not be accepted, but whether the mineral reservation should be required of the nonmineral applicant if not furnished, will depend upon the Geological Survey's report as to the prospective value of the land. If already furnished, should be retained.[e]

10. All public sale cases where the status sheet shows land to be covered by a pending oil and gas case should be rejected, subject to appeal, in accordance with the regulations, unless coming within the provisions of paragraph 4 hereof.

William Spry, *Commissioner.*

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[e] See Instructions of July 2, 1925, p. 1414.

COUNTIES AND STATES IN WHICH REPORT AS TO OIL AND GAS CHARACTER OF LAND IS REQUIRED IN CONNECTION WITH APPLICATIONS OR ENTRES UNDER NONMINERAL LAWS WITHOUT OIL AND GAS RESERVATION

ORDER NO. 349

DEPARTMENT OF THE INTERIOR,
Washington, May 14, 1929.[14]

Hereafter the Commissioner of the General Land Office will call upon the Director of the Geological Survey for report as to whether the lands affected are valuable for oil or gas in connection with all entries and applications to locate, enter, select, or purchase under the nonmineral land laws of the United States involving lands in the counties and parishes listed below, by States, unless any such entry or application is subject to a reservation of oil and gas to the United States under appropriate law.

Alabama: All.

Arizona: Apache, Coconino, Mohave, and Navajo.

Arkansas: Arkansas, Crawford, Franklin, Johnson, Logan, Mississippi, Scott, and Sebastian.

California: Alameda, Colusa, Fresno, Glenn, Humboldt, Imperial, Kern, Kings, Lake, Los Angeles, Madera, Mendocino, Merced, Monterey, Napa, Riverside, San Benito, San Bernardino, San Luis Obispo, Santa Barbara, Santa Clara, Solano, Sonoma, Stanislaus, Tehama, Tulare, Ventura, Yolo, and Yuba.

Colorado: Archuleta, Baca, Bent, Boulder, Cheyenne, Crowley, Delta, Dolores, Eagle, El Paso, Fremont, Garfield, Grand, Gunnison, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, La Plata, Larimer, Las Animas, Lincoln, Logan, Mesa, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Pitkin, Prowers, Pueblo, Rio Blanco, Routt, San Miguel, Washington, Weld, and Yuma.

Florida: Calhoun, Escambia, Holmes, Liberty, Santa Rosa, Walton, and Washington.

Idaho: Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Fremont, Madison, Oneida, Power, and Teton.

Kansas: All.

Louisiana: All.

Michigan: All counties in southern peninsula.

Mississippi: All.

Montana: Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Gallatin, Garfield Glacier, Golden Valley, Hill, Judith Basin, Lewis and Clark, Liberty, McCone, Meagher, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, and Yellowstone.

Nebraska: All.

Nevada: Lincoln and White Pine.

New Mexico: Bernalillo, Chaves, Colfax, Curry, De Baca, Dona Ana, Eddy, Guadalupe, Harding, Lea, Lincoln, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Torrance, Union, and Valencia.

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[14] See instructions of Apr. 8, 1922, p. 1414 and of July 15, 1929, p. 1422.

North Dakota: Billings, Bowman, Burleigh, Divide, Dunn, Golden Valley, Grant, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Pierce, Sheridan, Sioux, Slope, and Williams.

Oklahoma: All.

Oregon: Benton, Clatsop, Columbia, Coos, Curry, Douglas, Lane, Lincoln, Marion, Polk, Tillamook, Washington, and Yamhill.

South Dakota: Bennett, Butte, Corson, Custer, Dewey, Fall River. Haakon, Harding, Jackson, Lawrence, Meade, Mellette, Pennington, Perkins, Stanley, and Ziebach.

Utah: Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Kane, Morgan, Rich, San Juan, Sanpete, Sevier, Summit, Uintah, Wasatch, Washington, and Wayne.

Washington: Benton, Clallam, Cowlitz, Jefferson, King, Kittitas, Lewis, Mason, Skagit, Snohomish, and Whatcom.

Wyoming: All.

RAY LYMAN WILBUR, *Secretary.*

REPORTS AS TO OIL AND GAS CHARACTER OF LANDS—WHEN REQUIRED

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, July 15, 1929.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: Under date of June 11 last the department instructed you that it would be unnecessary to request the director of the Geological Survey to make a report pursuant to Order No. 349 relative to lands within the former Fort Peck Indian Reservation.

You having informally requested further instructions, you are advised that the same rule applies to lands in other reservations where, prior to the opening of the lands to entry, there was a nonmineral classification pursuant to which the lands were entered. If a reservation was opened to entry without such classification having been first made, and the land is within a county named in Order No. 349, a request for a report should be made.

In no case will it be necessary to request a report where the land is entered under the stock-raising homestead act or where the entry is made subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509), as to oil and gas.

Very truly yours,

JOHN H. EDWARDS,
Assistant Secretary.

SURVEYS AND SURVEYORS[1]

PENALTIES FOR DESTROYING CORNER MONUMENTS[f]

To aid in the protection of all evidences of public-land surveys, a clause was enacted in chapter 398, 29 United States Statutes, page 343, prohibiting the destruction or removal of monuments of any United States survey, and fixing penalties for violation.

This clause was amended by section 57 of the act approved March 4, 1909, revising and amending the penal laws of the United States, to read as follows:

> SEC. 57. Whoever shall willfully destroy, deface, change, or remove to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or shall willfully deface, change, or remove any monument or bench mark of any Government survey, shall be fined not more than two hundred and fifty dollars, or imprisoned not more than six months, or both.

[Reported, 38 L. D. 1]

RESTORATION OF LOST OR OBLITERATED CORNERS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 1, 1909.

1. The increasing number of letters from county and local surveyors received at this office making inquiry as to the proper method of restoring to their original position lost or obliterated corners marking the survey of the public lands of the United States, or such as have been willfully or accidentally moved from their original position, have rendered the preparation of the following general rules necessary, particularly as in a very large number of cases the immediate facts necessary to a thorough and intelligent understanding are omitted. Moreover, surveys having been made under the authority of different acts of Congress, different results have been obtained, and no special law has been enacted by that authority covering and regulating the subject of the above-named inquiries. Hence, the general rule here given must be considered merely as an expression of the opinion of this office on the subject, based, however, upon the spirit of the several acts of Congress authorizing the surveys, as construed by this office, and by United States court decisions. When cases arise which are not covered by these rules, and the advice of

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[1] In addition to the circulars and instructions relative to surveys, printed in this volume, the following, on the same subject, are issued as separate publications: Standard Field Tables; The Improved Solar Attachment; Manual of Instructions for the Survey of the Public Lands of the United States and Ephemeris of the Sun and Polaris and Tables of Azimuths and Altitudes of Polaris.

[f] The information under this heading is reproduced from statement carried in Circular of June 1, 1909.

this office is desired, the letter of inquiry should always contain a description of the particular corner, with reference to the township, range, and section of the public surveys, to enable this office to consult the record.

2. An obliterated corner is one where no visible evidence remains of the work of the original surveyor in establishing it. Its location may, however, have been preserved beyond all question by acts of landowners, and by the memory of those who knew and recollect the true situs of the original monument. In such cases it is not a lost corner.

A lost corner is one whose position can not be determined, beyond reasonable doubt, either from original marks or reliable external evidence.

Surveyors sometimes err in their decision whether a corner is to be treated as lost or only obliterated.

3. Surveyors who have been United States deputies should bear in mind that in their private capacity they must act under somewhat different rules of law from those governing original surveys, and should carefully distinguish between the provisions of the statute which guide a Government deputy and those which apply to retracement of lines once surveyed. The failure to observe this distinction has been prolific of erroneous work and injustice to landowners.

4. To restore extinct boundaries of the public lands correctly, the surveyor must have some knowledge of the manner in which townships were subdivided by the several methods authorized by Congress. Without this knowledge he may be greatly embarrassed in the field, and is liable to make mistakes invalidating his work, and leading eventually to serious litigation.

5. Various regions of this country were surveyed under different sets of instructions issued at periods ranging from 1785 to the present time. The earliest rules were given to deputy surveyors in manuscript or in printed circulars, and no copies are available for distribution.

Regulations more in detail, improving the system for greater accuracy and permanency, were issued in book form, editions of 1855, 1871, 1890, 1894, and 1902. The supply of copies of these is exhausted, except the latest, which is now sold at cost to unofficial applicants by the Superintendent of Documents.

6. The chief acts of Congress authorizing and regulating public-land surveys are summarized below to enable anyone to consult the full record thereof for explanation of difficult questions regarding early surveys.

7. Compliance with the provisions of congressional legislation at different periods has resulted in two sets of corners being established on township lines at one time; at other times three sets of corners have been established on range lines; while the system now in operation makes but one set of corners on township boundaries, except on standard lines—i. e., base and correction lines, and in some exceptional cases.

The following brief explanation of the modes which have been practiced will be of service to all who may be called upon to restore obliterated boundaries of the public-land surveys:

Where two sets of corners were established on township boundaries, one set was planted at the time the exteriors were run, those on the north boundary belonging to the sections and quarter sections north of said line, and those on the west boundary belonging to the sections and quarter sections west of that line. The other set of corners was established when the township was subdivided. This method, as stated, resulted in the establishment of two sets of corners on all four sides of the townships.

Where three sets of corners were established on the range lines, the subdivisional surveys were made in the above manner, except that the east and west section lines, instead of being closed upon the corners previously established on the east boundary of the township, were run due east from the last interior section corner, and new corners were erected at the points of intersection with the range line.

8. The method now in practice, where regular conditions are found, requires section lines to be initiated at the corners on the south boundary of the township, and to close on existing corners on the east, north, and west boundaries of the township, except that when the north boundary is a base line or standard parallel, new corners are set thereon, called closing corners. But in some cases, for special reasons, an opposite course of procedure has been followed, and subdivisional work has been begun on the north boundary and has been extended southward.

9. For the above reasons it is evident that a subsequent surveyor ought not to perform field work without knowing all the facts of the original survey, lest there be unsuspected duplication of official corners, leading him to use the wrong one in his survey. Upon township and range lines it is often necessary to procure copies of the plats of surveys on both sides, in order to become certain of the necessary understanding of the case, as required in section 57 of this circular. A great many township plats fail to show the second set of corners, established in the survey of an adjoining township, subsequent to the plat of the former township.

10. In the more recent general instructions greater care has been exercised to secure rectangular subdivisions by fixing a strict limitation that no new township exteriors or section lines shall depart from a true meridian or east and west line more than 21 minutes of arc; and that where a random line is found liable to correction beyond this limit, a true line on a cardinal course must be run, setting a closing corner on the line to which it closes.

This produces, in new surveys closing to irregular old work, a great number of exteriors marked by a double set of corners. All retracing surveyors should proceed under these new conditions with full knowledge of the field notes and exceptional methods of subdivision.

SYNOPSIS OF ACTS OF CONGRESS

11. The first enactment in regard to the surveying of the public lands was an ordinance passed by the Congress of the Confederation May 20, 1785, prescribing the mode for the survey of the "Western Territory," and which provided that said territory should be divided into "townships of 6 miles square, by lines running due north and south, and others crossing them at right angles" as near as might be.

It further provided that the first line running north and south should begin on the Ohio River at a point due north from the western terminus of a line run as the south boundary of the State of Pennsylvania, and the first line running east and west should begin at the same point and extend through the whole territory. In these initial surveys only the exterior lines of the townships were surveyed, but the plats were marked by subdivisions into sections 1 mile square, numbered from 1 to 36, commencing with No. 1 in the southeast corner of the township, and running from south to north in each tier to No. 36 in the northwest corner of the township; mile corners were established on the township lines. The region embraced by the surveys under this law forms a part of the present State of Ohio, and is generally known as "the Seven Ranges."

12. The Federal Congress passed a law, approved May 18, 1796, in regard to surveying the public domain, which applied to "the territory northwest of the River Ohio, and above the mouth of the Kentucky River."

Section 2 of said act provided for dividing such lands as had not been already surveyed or disposed of "by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of 6 miles square," etc. It also provided that "one-half of said townships, taking them alternately, should be subdivided into sections containing, as nearly as may be, 640 acres each, by running through the same each way parallel lines at the end of every two miles; and by marking a corner on each of said lines at the end of every mile." The act also provided that "the sections shall be numbered, respectively, beginning with the No. 1 in the northeast section, and proceeding west and east alternately through the township, with progressive numbers till the thirty-sixth be completed." This method of numbering sections is still in use.

13. An act amendatory of the foregoing, approved May 10, 1800, required the "townships west of the Muskingum, which are directed to be sold in quarter townships, to be subdivided into half sections of 320 acres each, as nearly as may be, by running parallel lines through the same from east to west, and from south to north, at the distance of one mile from each other, and marking corners, at the distance of each half mile on the lines running from east to west, and at the distance of each mile on those running from south to north. And the interior lines of townships intersected by the Muskingum, and of all townships lying east of that river, which have not been heretofore actually subdivided into sections, shall also be run and marked * * *. And in all cases where the exterior lines of the townships thus to be subdivided into sections or half sections, shall exceed or shall not extend 6 miles, the excess or deficiency shall be specially noted, and added to or deducted from the western or northern ranges of sections or half sections in such townships, according as the error may be in running the lines from east to west or from south to north." Said act also provided that the northern and western tiers of sections should be sold as containing only the quantity expressed on the plats, and all others as containing the complete legal quantity.

14. The act approved June 1, 1796, "regulating the grants of land appropriated for military services," etc., provided for dividing the "United States Military Tract," in the State of Ohio, into townships 5 miles square, each to be subdivided into quarter townships containing 4,000 acres.

15. Section 6 of the act approved March 1, 1800, amendatory of the foregoing act, enacted that the Secretary of the Treasury was authorized to subdivide the quarter townships into lots of 100 acres, bounded as nearly as practicable by parallel lines 160 perches in length by 100 perches in width. These subdivisions into lots, however, were made upon the plats in the office of the Secretary of the Treasury, and the actual survey was only made at a subsequent time when a sufficient number of such lots had been located to warrant the survey. It thus happened, in some instances, that when the survey came to be made the plat and survey could not be made to agree, and that fractional lots on plats were entirely crowded out. A knowledge of this fact may explain some of the difficulties met with in the district thus subdivided.

16. The act of greatest importance to the work of all retracing surveyors is the one approved February 11, 1805, which is still in force, as reenacted by revision in 1874. It directs the subdivision of public lands into quarter-sections, and sets forth three principles for ascertaining the boundaries and contents of tracts of public land, after survey, in substance as follows:

17. (*a*) All corners marked in the surveys returned by the surveyor-general shall be established as the proper corners of the sections or quarter-sections which they were intended to designate, and corners of half and quarter sections not marked shall be placed as nearly as possible "equidistant from those two corners which stand on the same line."

18. (*b*) "The boundary lines actually run and marked" (in the field) "shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines as returned by either of the surveyors aforesaid shall be held and considered as the true length thereof. And the boundary lines which shall not have been actually run and marked as aforesaid shall be ascertained by running straight lines from the established corners to the opposite corresponding corners, but in those portions of the fractional townships where no such opposite or corresponding corners have been or can be fixed, the said boundary lines shall be ascertained by running from the established corners due north and south" (see secs. 67 and 79), "or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township."

19. (*c*) "Each section, or subdivision of section, the contents whereof shall have been returned by the surveyor general, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respecttively, of the returned contents of the section of which they may make part."

20. These three principles were clearly designed for the purpose of establishing beyond dispute all lines and monuments of accepted

official surveys and of placing a statutory limitation against attempts to alter the same, or to set up complaints of deficiency of area as a basis for resurvey.

PENALTIES FOR REMOVAL OF MONUMENTS

21. Several of the States have passed laws prescribing penalties for the destruction or removal of United States survey corners, and the act of Congress quoted on page 1423 relates to such destruction or removal in all the States and Territories. Any person having knowledge of a violation of the law last mentioned may present legal evidence thereof to the United States attorney for the district in which the land lies, and request the prosecution of the offender. Should any such attorney improperly refuse to take action, the matter may be called to the attention of the Department of Justice, Washington, D. C.

22. The act of Congress approved April 24, 1820, provides for the sale of public lands in half-quarter sections, and requires that "in every case of the division of a quarter section the line for the division thereof shall run north and south," "and fractional sections, containing 160 acres and upwards, shall in like manner, as nearly as practicable, be subdivided into half-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections containing less than 160 acres shall not be divided."

23. The act of Congress approved May 24, 1824, provides "that whenever, in the opinion of the President of the United States, a departure from the ordinary mode of surveying land on any river, lake, bayou, or water course would promote the public interest, he may direct the surveyor general in whose district such land is situated, and where the change is intended to be made, under such rules and regulations as the President may prescribe, to cause the lands thus situated to be surveyed in tracts of 2 acres in width, fronting on any river, bayou, lake, or water course, and running back the depth of 40 acres."

24. The act of Congress approved April 5, 1832, directed the subdivision of the public lands into quarter-quarter sections; that in every case of the division of a half-quarter section the dividing line should run east and west, and that fractional sections should be subdivided, under regulations prescribed by the Secretary of the Treasury. Under the latter provision the Secretary directed that factional sections containing less than 160 acres, or the residuary portion of a fractional section, after the subdivision into as many quarter-quarter sections as it is susceptible of, may be subdivided into lots, each containing the quantity of a quarter-quarter section as nearly as practicable, by so laying down the line of subdivision that they shall be 20 chains wide, which distances are to be marked on the plat of subdivisions, as are also the areas of the quarter-quarters and residuary fractions.

These two acts last mentioned provided that the corners and contents of half-quarter and quarter-quarter sections should be ascertained as nearly as possible in the manner and on the principles prescribed in the act of Congress approved February 11, 1805.

GENERAL RULES

25. From the foregoing synopsis of congressional legislation it is evident—

First. That the boundaries of the public lands established and returned by the duly appointed Government surveyors, when approved by the surveyors general and accepted by the Government, are unchangeable.

Second. That the original township, section, and quarter-section corners established by the Government surveyors must stand as the true corners which they were intended to represent, whether the corners be in the place shown by the field notes or not.

Third. That quarter-quarter corners not established by the Government surveyors shall be placed on the straight lines joining the section and quarter-section corners and midway between them, except on the last half mile of section lines closing on the north and west boundaries of the township, or on other lines between fractional sections.

Fourth. That all subdivisional lines of a section running between corners established in the original survey of a township must be straight lines, running from the proper corner in one section line to its opposite corresponding corner in the opposite section line. (See secs. 75 to 82.)

Fifth. That in a factional section where no opposite corresponding corner has been or can be established, any required subdivision line of such section must be run from the proper original corner in the boundary line as nearly due east and west, or north and south, as the case may be, to the water course, Indian reservation, or other boundary of such section, as due parallelism to section lines will permit, under the modifying rule in section 79.

26. From the foregoing it will be plain that extinct corners of the Government surveys must be restored to their original locations, whenever it is possible to do so; and hence resort should always be first had to the marks of the survey in the field. The locus of the missing corner should be first identified on the ground by the aid of the mound, pits, line trees, bearing trees, etc., described in the field notes of the original survey.

27. The identification of mounds, pits, buried memorials, witness trees, or other permanent objects noted in the field notes of survey, affords the best means of relocating the missing corner in its original position. If this can not be done, clear and convincing testimony of citizens as to the place originally occupied should be taken, if such can be obtained. In any event, whether the locus of the corner be fixed by the one means or the other, such locus should always be tested and confirmed by measurements to known corners. No definite rule can be laid down as to what shall be sufficient evidence in such cases, and much must be left to the skill, fidelity, and good judgment of the surveyor in the performance of his work.

28. Actions or decisions by county surveyors which may result in changes of boundaries of tracts of land and involve questions of ownership in connection therewith, are subject to review by the local courts in proceedings instituted in accordance with the local statutes governing such matters.

EXCEPTIONAL CASES

29. When new measurements are made on a single line to determine the position thereon for a restored lost corner (for example, a quarter-section corner on line between two original section corners), or when new measurements are made between original corners on two lines for the purpose of fixing by their intersection the position of a restored missing corner (for example, a corner common to four sections or four townships) it will almost invariably happen that discrepancies will be developed between the new measurements and the original measurements in the field notes. When these differences occur the surveyor will in all cases establish the missing corner by proportionate measurements (see secs. 49, 83, 84, and 85) on lines conforming to the original field notes and by the method followed in the original survey. From this rule there can be no departure, since it is the basis upon which the whole operation depends for accuracy and truth.

30. In cases where the relocated corner can not be made to harmonize with the field notes in all directions, and unexplained discrepancy in the original survey is apparent, it sometimes becomes the task of the surveyor to place it according to the requirements of one line and against the calls of another line. For instance, if the line between sections 30 and 31, reported 78 chains long, would draw the missing corner on range line 1 chain eastward out of range with the other exterior corners, the presumption would be strong that the range line had been run straight and the length of the section line wrongly reported, because experience shows that west random lines are regarded as less important than range lines and more liable to error.

31. Again, where a corner on a standard parallel has been obliterated, it is proper to assume that it was placed in line with other corners, and if an anomalous length of line reported between sections 3 and 4 would throw the closing corner into the northern township, a surveyor would properly assume that the older survey of the standard line is to control the length of the later and minor line. The marks or corners found on such a line closing to a standard parallel fix its location, but its length should be limited by its actual intersection, at which point the lost closing corner may be placed.

32. The strict rule of the law that " all corners marked in the field shall be established as the corners which they were intended to designate," and the further rule that " the length of lines returned by the surveyors shall be held and considered as the true length thereof," are found in some cases to be impossible of fulfillment in all directions at once, and a surveyor is obliged to choose, in his own discretion, which of two or more lines must yield, in order to permit the rules to be applied at all.

33. In a case of an erroneous but existing closing corner, which was set some distance out of the true State boundary of Missouri and Kansas, it was held by this office that a surveyor subdividing the fractional section should preserve the boundary as a straight line, and should not regard said closing corner as the proper corner of the adjacent fractional lots. The said corner was considered as fixing the position of the line between two fractional sections, but that its length extended to a new corner to be set on the true boundary line. The

surveyor should therefore preserve such an original corner as evidence of the line; but its erroneous position should not be allowed to cause a crook between mile corners of the original State boundary. It is only in cases where it is manifestly impossible to carry out the literal terms of the law that a surveyor can be justified in making such a decision.

34. The principle of the preponderance of one line over another of less importance has been recognized in the rule for restoring a section corner common to two townships, in former editions of this circular. The new corner should be placed on the township line; and measurements to check its position by distances to corners within the townships are useful to confirm it if found to agree well, but should not cause it to be placed off the line if found not to agree, if the general condition of the boundary supports the presumption that it was properly aligned.

MAGNETIC DECLINATION

35. The subject of the "variation," formerly deemed most important in surveys, is mentioned here only to advise against its use as a basis for the location of any lost line, though it may be a temporary guide in a preliminary search for old evidences. Its importance is greatly overrated, from lack of knowledge of the actual practice of surveyors, in the days when both their instruments and their knowledge were more primitive.

36. The General Land Office prohibits its employees and contracting surveyors from depending to any extent on courses derived from the needle. It also declines to advise other surveyors what variation to use in their own regions, for evident reasons, as follows:

The amount of local magnetism can not truly be determined by any process of mere calculation.

The secular change of declination reported at some distant time and place is no safe guide to the fact at any other station or period.

The variation recorded in old work may have been quite incorrect, as large contracts were sometimes executed by assuming a variation, from hearsay or estimation, and without due verification.

The needle is not only subject to daily and yearly change but is also liable to defects in the instrument, so that different compasses may run different courses.

37. Another serious cause of distrust is found in the authorized rules followed in early surveys, down to the year 1864, under which a vast amount of public land was surveyed, with a record showing variations which were openly inconsistent, and which should here be explained.

Before 1864, in running random and true section lines, it was required to make the record of courses on the ancient plan shown by this example: East on a random line between sections 1 and 12. Variation 13° 15′ E. (falling perhaps 42 links north of objective corner). West on true line between sections 1 and 12. Variation 12° 57′ E., etc., thus representing the "corrected" course by a nominal change of variation, whereas, after the instructions of 1864, the record would truly show the change to have been not in the variation but in the course, thus: N. 89° 42′ W. on a true line, etc.

Therefore in a large portion of the early records the words "east" and "west" in such connection were only approximate, while by the present system the true course is intended.

38. Terrestrial magnetism, the cause of "variation," is a fluctuating quantity, subject to unexplained changes. But since all qualified surveyors and engineers of this day are competent to make the requisite astronomical observations to determine true courses, surveying by the needle is not recommended.

MARKS ON MONUMENTS OF SURVEY

39. Inquiries are often made to learn the meaning of the marks on corner stones. It is not practicable here to give an abstract of all the markings used in full compliance with the manual, but the following notes will suffice to explain ordinary cases:

Notches made on the east and south angles of an interior section corner indicate how many miles it is from the east and south lines of a full township; and by using the plan of a township plat the numbers of the sections about the given corner stone will be known. In fractional townships marks show the sections the same as if the boundaries were complete.

40. Observe that there are cases of irregular subdivision, where the stone or post is a corner of two townships or two sections only; also that stones may have been sometimes overthrown or turned around to a new and improper position.

41. On township and range lines grooves cut in the stone or post on opposite sides show distances to exterior corners of the township. Thus, two grooves on the south and four on the north indicate a corner of sections 19, 24, 25, and 30.

42. "W C" upon a monument means a witness corner, placed not at the true corner point (which may be in water or otherwise impracticable), but established elsewhere on safe ground at a distance and course shown by the official field notes and plats.

"M C" shows a meander corner, placed either on an exterior or section line at any certain distance from a section corner, as shown by the plat.

43. "S C" denotes a standard corner—that is, a regular corner on a standard parallel—belonging to two sections on the north side, with a closing corner (marked "C C") somewhere east or west of it, belonging to two sections on the south side of the parallel. The letters C C are also used in many other situations, where a regular line closed upon a boundary of a State, a reservation, or a private land claim.

44. Post corners and bearing trees (B T) have marks that are self-explanatory. Two chops or notches on the two opposite sides of a tree indicate that it stood upon the original line when surveyed. Such are called "line trees," and are thus distinguished from trees merely blazed near the line.

Full instructions as to the construction, marking, and differentiation of the 108 kinds of corner monuments are given in the Manual of Surveying Instructions. These should be consulted, in connection with a correct copy of the original field notes, in case of difficulty.

TO RESTORE LOST OR OBLITERATED CORNERS

45. To restore corners on base lines and standard parallels: Lost or obliterated standard corners will be restored to their original positions on a base line, standard parallel, or correction line by proportionate measurements on the line, conforming as nearly as practicable to the original field notes and joining the nearest identified original standard corners on opposite sides of the missing corner or corners, as the case may be.

46. The term "standard corners" will be understood to designate standard township, section, quarter section, and meander corners; and, in addition, closing corners, in the following cases: Closing corners used in the original survey to determine the position of a standard parallel or established during the survey of the same will, with the standard corners, govern the alinement and measurements made to restore lost or obliterated standard corners; but no other closing corners will control in any manner the restoration of standard corners on a base line or standard parallel.

47. A lost or obliterated closing corner from which a standard parallel has been initiated or to which it has been directed will be reestablished in its original place by proportionate measurement from the corners used in the original survey to determine its position Measurements from corners on the opposite side of the parallel will not control in any manner the relocation of said corner.

48. A missing closing corner originally established during the survey of a standard parallel as a corner from which to project surveys south will be restored to its original position by considering it a standard corner and treating it accordingly.

49. Therefore, paying attention to the preceding explanations, we have for the restoration of one or several corners on a standard parallel, and for general application to all other surveyed lines, the following proportion:

As the original field-note distance between the selected known corners is to the new measure of said distance so is the original field-note length of any part of the line to the required new measure thereof.

The sum of the computed lengths of the several parts of a line must be equal to the new measure of the whole distance.

50. As has been observed, existing original corners can not be disturbed; consequently discrepancies between the new and the original field-note measurements of the line joining the selected original corners will not in any manner affect measurements beyond said corners, but the differences will be distributed proportionately to the several intervals embraced in the line in question.

After having checked each new location by measurement to the nearest known corners, new corners will be established permanently and new bearings and measurements taken to prominent objects, which should be of as permanent a character as possible, and the same recorded for future reference.

51. Restoration of township corners common to four townships: Two cases should be clearly recognized: First, where the position of the original township corner has been made to depend upon measurements on two lines at right angles to each other. Second, where the

original corner has been located by measurements on one line only; for example, on a guide meridian.

52. For restoration of a township corner originally subject to the first condition: A line will first be run connecting the nearest identified original corners on the meridianal township lines, north and south of the missing corner, and a temporary corner will be placed at the proper proportionate distance. This will determine the corner in a north and south direction only.

Next, the nearest original corners on the latitudinal township lines will be connected and a point thereon will be determined in a similar manner, independent of the temporary corner on the meridianal line. Then through the first temporary corner run a line east (or west) and through the second temporary corner a line north (or south), as relative situations may suggest. The intersection of the two lines last run will define the position of the restored township corner, which may be permanently established.

53. The restoration of a lost or obliterated township corner established under the second condition, i. e., by measurements, on a single line, will be effected by proportionate measurements on said line, between the nearest identified original corners on opposite sides of the missing township corner, as before described.

54. Reestablishment of corners common to two townships: The two nearest known corners on the township line, the same not being a base or a correction line, will be connected, as shown in sections 45 to 50, by a right line, and the missing corner established by proportionate distance as directed in that case; the location thus found will be checked upon by measurements to nearest known section or quarter-section corners north and south, or east and west, of the township line, as the case may be, to obtain approximate though probably not exact verification of original distances.

55. Reestablishment of closing corners: Measure from the quarter-section, section, or township corner east or west, as the case may be, to the next preceding or succeeding corner in the order of original establishment, and reestablish the missing closing corner by proportionate measurement. The line upon which the closing corner was originally established should always be remeasured, in order to check upon the correctness of the new location. (See secs. 29 to 34 and 64 to 66 for details.)

56. Reestablishment of interior section corners: This class of corners should be reestablished in the same manner as corners common to four townships. In such cases, when a number of corners are missing on all sides of the one sought to be reestablished, the entire distance must, of course, be remeasured between the nearest existing recognized corners both north and south, and east and west, in accordance with the rule laid down, and the new corner reestablished by proportionate measurement. The mere measurement in any one of the required directions will not suffice, since the direction of the several section lines running northward through a township, or running east and west, are only in the most exceptional cases true prolongations of the alinement of the section lines initiated on the south boundary of the township; while the east and west lines running through the township, and theoretically supposed to be at right angles with the former, are seldom in that condition, and the alinements of

the closing lines on the east and west boundaries of the township, in connection with the interior section lines, are even less often in accord. Moreover, the alinement of the section line itself from corner to corner, in point of fact, also very frequently diverges from a right line, although presumed to be such from the record contained in the field notes and so designated on the plats, and becomes either a broken or a curved line. This fact will be determined, in a timbered country, by the blazes which may be found upon trees on either side of the line, and although such blazed line will not strictly govern as to the absolute direction assumed by such line, it will assist very materially in determining its approximate direction, and should never be neglected in retracements for the reestablishment of lost corners of any description. Sight or line trees described in the field notes, together with the recorded distances to same, when fully identified, will, it has been held in one or more States, govern the line itself, even when not in a direct or straight line between established corners, which line is then necessarily a broken line by passing through said sight trees. Such trees, when in existence and properly identified beyond a question of doubt, will very materially assist in evidencing the correct relocation of a missing corner. It is greatly to be regretted that the earlier field notes of survey are so very meager in the notation of the topography found on the original line, which might in very many instances materially lessen a surveyor's labors in retracement of lines and reestablishment of the required missing corner. In the absence of such sight trees and other evidence regarding the line, as in an open country, or where such evidence has been destroyed by time, the elements, or the progress of improvement, the line connecting the known corners should be run straight from corner to corner.

57. Reestablishment of quarter-section corners on township boundaries: Only one set of quarter-section corners are actually marked in the field on township lines, and they are established at the time when the township exteriors are run. When double section corners are found, the quarter-section corners are considered generally as standing midway between the corners of their respective sections, and when required to be established or reestablished, as the case may be, they should be generally so placed; but great care should be exercised not to mistake the corners belonging to one township for those of another. After determining the proper section corners marking the line upon which the missing quarter-section corner is to be reestablished and measuring said line, the missing quarter-section corner will be reestablished in accordance with the requirements of the original field notes of survey, by proportionate measurement between the section corners marking the line.

58. Where there are double sets of section corners on township and range lines and the quarter-section corners for sections south of the township or east of the range lines are required to be established in the field, the said quarter-section corners should be so placed as to suit the calculation of areas of the quarter sections adjoining the township boundaries as expressed upon the official township plat, adopting proportionate measurements when the present measurement of the north and west boundaries of the sections differs from the original measurement.

59. Reestablishment of quarter-section corners on closing section lines between fractional sections: This class of corners must be rees-

tablished proportionately, according to the original measurement of 40 chains from the last interior section corner. If the whole measurement does not agree with the original survey, the excess or deficiency must be divided proportionately between the two distances expressed in the field notes of original survey. The section corner started from and the corner closed upon should be connected by a right line, unless the retracement should develop the fact that the section line is either a broken or curved line, as is sometimes the case.

60. Reestablishment of interior quarter-section corners: In some of the older surveys these corners are placed at variable distances, in which case the field notes of the original survey must be consulted, and the quarter-section corner reestablished at proportionate distances between the corresponding section corners, in accordance therewith. The later surveys being more uniform and in stricter accordance with law, the missing quarter-section corner must be reestablished equidistant between the section corners marking the line, according to the field notes of the original survey. The remarks made under section 56, in relation to section lines, apply with full force here also; the caution there given not to neglect sight trees is equally applicable, since the proper reestablishment of the quarter-section corner may in some instances very largely depend upon its observance, and avoid one of the many sources of litigation.

61. Note.—In some of the southern public-land States it was the custom in the early surveys to establish half-mile posts at a distance of 40 chains from the point from which the section line was initiated, at the same time inserting in the field notes at the midway point "¼ sec. cor." without indication in the field notes that any other corner than the half-mile corner was set. And it is presumed that the ¼ sec. cor. was merely " called for " at that place. This practice has long been discontinued owing to the confusion thereby occasioned.

These half-mile posts have no bearing upon the subdivision of the section except where they happen to occupy the midway point on true lines between section corners. In such cases, when a subdivision is required of a section surveyed on this plan, and no original quarter corners are found, the latter should be reestablished at a point on a true line midway between the original section corners.

62. Where double corners were originally established, one of which is standing, to reestablish the other: It being remembered that the corners established when the exterior township lines were run, belong to the sections in the townships north and west of those lines, the surveyor must first determine beyond a doubt to which sections the existing corner belongs. This may be done by testing the course and distances to witness trees or other objects noted in the original field notes of survey, and by remeasuring distances to known corners. Having determined to which township the existing corner belongs, the missing corner may be reestablished in line from the existing corner, at the distance stated in the field notes of the original survey, by proportionate measurement, and tested by retracement to the opposite corresponding corner of the section to which the missing section corner belongs. These double corners being generally not more than a few chains apart, the distance between them can be more accurately

laid off, and it is considered preferable to first establish the missing corner as above, and check upon the corresponding interior corner as noted in section 54 above.

63. Where double corners were originally established, and both are missing, to reestablish the one established when the township line was run: The surveyor will connect the nearest known corners on the township line by a right line, being careful to distinguish the section from the closing corners, and reestablish the missing corner at the point indicated by the field notes of the original survey by proportionate measurement. The corner thus restored will be common to two sections either north or west of the township boundary, and the section north or west, as the case may be, should be carefully retraced, thus checking upon the reestablished corner, and testing the accuracy of the result. It can not be too much impressed upon the surveyor that any measurements to objects on line noted in the original survey are means of determining and testing the correctness of the operation.

64. Where double corners were originally established, and both are missing, to reestablish the one established when the township was subdivided: The corner to be reestablished being common to two sections south or east of the township line, the section line closing on the missing section corner should be first retraced to an intersection with the township line in the manner previously indicated, and a temporary corner established at the point of intersection. The township line will of course have been previously carefully retraced in accordance with the requirements of the original field notes of survey, and marked in such a manner as to be readily identified when reaching the same with the retraced section line. The location of the temporary corner planted at the point of intersection will then be carefully tested and verified by remeasurements to objects and known corners on the township line, as noted in the original field notes of survey, and the necessary corrections made in such relocation. Should unusual error be found, in one of the tested lines, the principles in "Exceptional Cases," sections 29 to 34, must be considered. A permanent corner will then be erected at the corrected location on the township line, properly marked and witnessed, and recorded for future requirements.

65. Where triple corners were originally established on range lines, one or two of which have become obliterated, to reestablish either of them: It will be borne in mind that only two corners were established as actual corners of sections, those established on the range line not corresponding with the subdivisional survey east or west of said range line. The surveyor will, therefore, first proceed to identify the existing corner or corners, as the case may be, and then reestablish the missing corner or corners in line north or south, according to the distances stated in the original field notes of survey in the manner indicated for the reestablishment of double corners, testing the accuracy of the result obtained, as hereinbefore directed in other cases. If, however, the distances between the triple corners are not stated in the original field notes of survey, as is frequently the case in the returns of older surveys, the range line should be first carefully retraced, and marked in a manner sufficiently clear to admit of easy identification upon reaching same during the subsequent proceedings. The section lines closing upon the missing corners

must then be retraced in accordance with the original field notes of survey, in the manner previously indicated and directed, and the corners reestablished in the manner directed in the case of double corners. The surveyor can not be too careful, in the matter of retracement, in following closely all the recorded indications of the original line, and nothing, however slight, should be neglected to insure the correctness of the retracement of the original line; since there is no other check upon the accuracy of the reestablishment of the missing corners, unless the entire corresponding section lines are remeasured by proportional measurement and the result checked by a recalculation of the areas as originally returned, which, at best, is but a very poor check, because the areas expressed upon the margin of many plats of the older surveys are erroneously stated on the face of the plats, or have been carelessly calculated.

66. Where triple corners were originally established on range lines, all of which are missing, to reestablish same: These corners should be reestablished in accordance with the foregoing directions, commencing with the corner originally established when the range line was run, establishing the same in accordance with previously given directions for restoring section and quarter-section corners; that is to say, by remeasuring between the nearest known corners on said township line, and reestablishing the same by proportionate measurement. The two remaining will then be reestablished in conformity with the general rules for reestablishment of double corners.

67. Reestablishment of meander corners: Before proceeding with the reestablishment of missing meander corners, the surveyor should have carefully rechained at least three of the section lines between known corners of the township within which the lost corner is to be relocated, in order to establish the proportionate measurement to be used. It is also necessary, in retracing such original lines, to ascertain the real course used by the first surveyor. For instance, where he reported meridional lines as running due north, if they are found to have an average course of N. 1° 20′ E., the latter course should be considered in restoring an extinct north line to a meander corner.

68. These requirements of preliminary retracement of section lines must in no case be omitted; since it gives the only data upon which the fractional section line can be remeasured proportionately and probable course found, the corner marking the terminus, or the meander corner, being missing, which it is intended to reestablish. The missing meander corner will be reestablished on the section or township line retraced in its original location, by the proportionate measurement found by the preceding operations, from the nearest known corner on such township or section line, in accordance with the requirements of the original field notes of survey.

69. Meander corners hold the peculiar position of denoting a point on line between landowners, without usually being the legal terminus or corner of the lands owned. Leading judicial decisions have affirmed that meander lines are not strictly boundaries, and do not limit the ownership to the exact areas placed on the tracts, but that said title extends to the water which, by the plat, appears to bound the land.

As such water boundaries are, therefore, subject to change by the encroachment or recession of the stream or lake, the precise location of old meanders is seldom important, unless in States whose laws prescribe that dried lake beds are the property of the State.

70. Where the United States has disposed of the fractional lots adjacent to shores, it claims no marginal lands left by recession or found by reason of erroneous survey. The lines between landowners are therefore regarded as extended beyond the original meander line of the shore, but the preservation or relocation of the meander corner is important as evidence of the position of the section line. The different rules by which division lines should be run between private owners of riparian accretions are a matter of State legislation, and not subject to a general rule of this office.

71. Fractional section lines: County and local surveyors being sometimes called upon to restore fractional section lines, closing upon Indian, military, or other reservations, private grants, etc., such lines should be restored upon the same principles as directed in the foregoing pages, and checked whenever possible upon such corners or monuments as have been placed to mark such boundary lines.

In some instances corners have been moved from their original position, either by accident or design, and county surveyors are called upon to restore such corners to their original positions, but, owing to the absence of any and all means of identification of such location, are unable to make the result of their work acceptable to the owners of the lands affected by such corner. In such cases the advice of this office has invariably been to the effect that the relocation of such corner must be made in accordance with the orders of a court of competent jurisdiction, the United States having no longer any authority to order any changes where the lands affected by such corner have been disposed of.

RECORDS

72. The original evidences of the public-land surveys in the following States have been transferred, under the provisions of sections 2218, 2219, and 2220, United States Revised Statutes, to the State authorities, to whom application should be made for such copies of the original plats and field notes as may be desired, viz:

Alabama: Secretary of State, Montgomery.
Arkansas: Commissioner of State Lands, Little Rock.
Florida: Commissioner of Agriculture, Tallahassee.
Illinois: Auditor of State, Springfield.
Indiana: Auditor of State, Indianapolis.
Iowa: Secretary of State, Des Moines.
Kansas: Auditor of State and Register of State Lands, Topeka.
Louisiana (after June 30, 1909): State officers.
Michigan: Public Domain Commissioner, Lansing.
Minnesota: Secretary of State, St. Paul.
Mississippi: Commissioner of State Lands, Jackson.
Missouri: Secretary of State, Jefferson City.
Nebraska: Commissioner of Public Lands and Buildings, Lincoln.
North Dakota: State Engineer, Bismarck.
Ohio: Auditor of State, Columbus.
Wisconsin: Commissioners of Public Lands, Madison.

In other public-land States the original field notes and plats are retained in the offices of the United States surveyors general.

SUBDIVISIONS OF SECTIONS

73. This office being in receipt of many letters making inquiry in regard to the proper method of subdividing sections of the public lands, the following general rules have been prepared as a reply to such inquiries. The rules for subdivision are based upon the laws governing the survey of the public lands. When cases arise which are not covered by these rules, and the advice of this office in the matter is desired, the letter of inquiry should, in every instance, contain a description of the particular tract or corner, with reference to township, range, and section of the public surveys, to enable the office to consult the record; also a diagram showing conditions found, giving distances in chains and links and not in feet.

74. Preliminary to subdivision it is most essential to know the actual boundaries of the section, as it can not be legally subdivided until the section corners and quarter-section corners have either been found, or restored by the preceding methods, and the resulting courses and distances determined by survey. The practice of entering a section to survey a tract from only one or two corners, and those perhaps unreliable, is unwarranted, and may result in litigation.

The order of procedure is: First reestablish the obliterated boundary corners; next, fix the lines of quarter sections; then form smaller tracts by equitable and proportionate division, according to the following rules:

75. Subdivision of sections into quarter sections.—Under the provisions of the act of Congress approved February 11, 1805, the course to be pursued in the subdivision of sections into quarter sections is to run straight lines from the established quarter-section corners, United States surveys, to the opposite corresponding corners. The point of intersection of the lines thus run will be the corner common to the several quarter sections, or, in other words, the legal center of the section.

76. Upon the lines closing on the north and west boundaries of a township, the quarter-section corners are established by the United States deputy surveyors at 40 chains to the north or west of the last interior section corners, and the excess or deficiency in the measurement is thrown into the half mile next to the township or range line, as the case may be.

77 Where there are double sets of section corners on township and range lines, the quarter corners for the sections south of the township lines and east of the range lines are not established in the field by the United States deputy surveyors, but in subdividing such sections said quarter corners should be so placed as to suit the calculations of the areas of the quarter sections adjoining the township boundaries as expressed upon the official plat, adopting proportionate measurements where the new measurements of the north or west boundaries of the section differ from the original measurements.

78. Subdivision of fractional sections.—Where opposite corresponding corners have not been or can not be fixed, the subdivision lines should be ascertained by running from the established corners due north, south, east, or west lines, as the case may be, to the water course, Indian boundary line, or other boundary of such fractional section.

79. The law presumes the section lines surveyed and marked in the field by the United States deputy surveyors to be due north and south or east and west lines, but in actual experience this is not always the case. Hence, in order to carry out the spirit of the law, it will be necessary in running the subdivisional lines through fractional sections to adopt mean courses, where the section lines are not due lines, or to run the subdivision line parallel to the east, south, west, or north boundary of the section, as conditions may require, where there is no opposite section line.

80. Subdivision of quarter sections into quarter quarters.—Preliminary to the subdivision of quarter sections, the quarter-quarter corners will be established at points midway between the section and quarter-section corners, and between quarter corners and the center of the section, except on the last half mile of the lines closing on the north or west boundaries of a township, where they should be placed at 20 chains, proportionate measurement, to the north or west of the quarter-section corner.

81. The quarter-quarter section corners having been established as directed above, the subdivision lines of the quarter section will be run straight between opposite corresponding quarter-quarter section corners on the quarter-section boundaries. The intersection of the lines thus run will determine the place for the corner common to the four quarter-quarter sections.

82. Subdivision of fractional quarter sections.—The subdivision lines of fractional quarter sections will be run from properly established quarter-quarter section corners, with courses governed by the advice in sections 67 and 79, to the lake, water course, or reservation which renders such tracts fractional, or parallel to the east, south, west, or north boundary of the quarter section, as conditions may require.

83. By "proportionate measurement" of a part of a line is meant a measurement having the same ratio to that recorded in the original field notes for that portion as the length of the whole line by actual resurvey bears to its length as given in the record. Differences between former and new measurements may generally be expected. They may occur through using a chain of erroneous length, or by careless setting of pins, by neglect of leveling, or by error in transcribing notes, and these should be carefully avoided in retracement as in original surveys. Instead of the old practice of "adjusting the chain" to suit the former measure, the distance taken by a precise method is compared with that of the record, and the shortage or surplus is computed by proportion, producing the same result in a more reliable manner.

84. For example: The length of the line from the quarter-section corner on the west side of sec. 2, T. 24 N., R. 14 E., Wisconsin, to the north line of the township, by the United States deputy surveyor's chain, was reported as 45.40 chains, and by the county surveyor's measure is reported as 42.90 chains; then the distance which the quarter-quarter section corner should be located north of the quarter-section corner would be determined as follows:

85. As 45.40 chains, the Government measure of the whole distance, is to 42.90 chains, the county surveyor's measure of the same distance, so is 20.00 chains, original measurement, to 18.90 chains by the

county surveyor's measure, showing that by proportionate measurement in this case the quarter-quarter section corner should be set at 18.90 chains north of the quarter-section corner, instead of 20.00 chains north of such corner, as represented on the official plat. In this manner the discrepancies between original and new measurements are equitably distributed.

86. A resurvey must be initiated at some well-defined, identified, and unquestioned starting point on the original surveys. It must terminate at some equally well-known and identified point; the intermediate corners being placed along that line in proportion as the whole redetermined distance is to the whole distance as originally reported. For example, should a line originally reported to be 160.00 chains be found by resurvey to be 164.00 chains, then the corners, originally reported as being placed 40.00 chains apart, will be placed 41.00 chains apart, and will be so reported by the later surveyor. This it will be seen requires that the whole distance between two well-defined corners (or points) be accurately known, in order to give the intermediate reestablished corners their proper relative positions, or distance apart.

FRED DENNETT, *Commissioner.*

Approved.

R. A. BALLINGER, *Secretary.*

[Reported, 40 L. D. 215]

CIRCULAR NO. 39[2]

REVOCATION OF APPOINTMENTS OF MINERAL SURVEYORS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 7, 1911.

The honorable SECRETARY OF THE INTERIOR.

SIR: Complying with the suggestion in department letter of June 23, 1911, addressed to United States Surveyor General, Reno, Nev., copy furnished this office, I submit below proposed amendment to paragraph 4, page 4, Manual of Instructions for the Survey of Mineral Lands of the United States, approved by the department October 6, 1908.

Although neither the letter to the Surveyor General, nor the decision therein referred to, of the department, of same date, in the case of mineral surveyor Edward Nissen, 10–108782, treat directly of revocation of appointments, except for cause, and at the expiration of each four years from the date of appointment (the practice would make the four years commence with the acceptance of the bond by this office) the proposed amendment has been prepared so as to authorize removal at any time when a bond becomes subject to renewal under the statute, but not, however, when only new or additional surety is deemed necessary.

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[2] For procedure in connection with appointments of United States mineral surveyors see Circular 1042, p. 1478.

I recommend that the regulation in question be so amended that, when amended, it will read as follows:

4. The Surveyors General have authority to suspend or revoke the appointments of mineral surveyors at any time, for cause, and to suspend or revoke the appointments at such times as the bonds become subject to renewal under the act of March 2, 1895 (28 Stat. 808), for reasons appearing sufficient to sustain a refusal to appoint in the first instance. The surveyors, however, will be allowed the right of appeal from the action of the Surveyor General in the usual manner. The appeal must be filed with the Surveyor General, who will at once transmit the same, with a full report, to the General Land Office. (20 L. D. 283.)

Very respectfully,

S. V. PROUDFIT,
Assistant Commissioner.

Approved July 29, 1911.

SAMUEL ADAMS,
Acting Secretary.

SURVEYS OF RECLAMATION LANDS

DEPARTMENT OF THE INTERIOR,
Washington, June 1, 1912.[3]

1. Whenever it may be necessary for the purpose of accurate description or economic irrigation to further subdivide the public lands to be irrigated or to segregate lands to be reserved or appropriated for reclamation purposes under the provisions of the reclamation act, the Director of the Reclamation Service shall cause such surveys to be made under the following regulations:

2. When a line that does not conform to the rectangular system of the public-land surveys is to be adopted as a boundary between two or more tracts or lots and the same passes through one or more sections, an actual survey of such irregular line will be made upon the ground marked by permanent monuments at each angle point thereof and wherever a line of the public surveys is crossed or closed upon. Such line shall be tied to the nearest corner of the public-land surveys by course and distance at its initial and terminal points.

3. Observation on Polaris, or the sun, for the true meridian will not be necessary when deflection angles are read from an established line of an accepted official survey, but the direction or bearing and length of each line thus determined will be recorded; the bearing to be read to the nearest quarter degree and the distance measured to the nearest 10 links or 10 feet.

4. If the irregular boundary line is to be initiated on or closed upon a rectangular sectional subdivisional line not established upon the ground in the course of the public surveys sufficient subdivision must be made in accordance with the existing regulations of the General Land Office regarding the restoration of lost or obliterated corners and subdivision of sections as will be necessary to provide a line upon which the traverse may be initiated or closed.

5. Necessary retracement and restoration work shall be performed for the location of corners to which connections are to be made.

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[3] Amended by instructions of Mar. 23, 1916, p. 1464.

Any area to be permanently reserved for reclamation purposes lying entirely within a section shall be designated as a tract and numbered commencing with 37, or the next higher tract number in the township.

6. A record of a survey of this character, in the form of field notes and plats, shall be prepared by the Director of the Reclamation Service and submitted to the Commissioner of the General Land Office for examination, approval, and notation upon the records of his office in the usual manner.

7. The departmental instructions of October 24, 1906, as amended on June 11, 1908, together with the Manual of Surveying Instructions will remain in full force and effect except as herein modified for the execution of these surveys.

SAMUEL ADAMS, *First Assistant Secretary.*

[Reported, 42 L. D. 124]

CIRCULAR NO. 235

REGULATIONS GOVERNING SURVEYS OF HOMESTEAD ENTRIES WITHIN NATIONAL FORESTS UNDER THE ACT OF JUNE 11, 1906, AND ACTS AMENDATORY THEREOF, UNDER THE PROVISIONS OF THE ACTS OF AUGUST 10, 1912, AND MARCH 4, 1913

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 30, 1913.

United States Surveyors General.

SIRS: An act approved August 10, 1912 (37 Stats. 287), creating appropriations for the Department of Agriculture for the fiscal year ending June 30, 1913, contains the following:

> For the expenditure under the direction of the Secretary of Agriculture for survey and listing of lands within forest reserves chiefly valuable for agriculture and describing the same by metes and bounds, or otherwise, as required by the Act of June eleventh, nineteen hundred and six, and the Act of March third, eighteen hundred and ninety-nine, thirty-five thousand dollars: *Provided, however,* That any such survey and the plat and field notes thereof paid for out of this appropriation shall be made by an employee of the Forest Service under the direction of the United States surveyor general, but no land listed under the Act of June eleventh, nineteen hundred and six, shall pass from the forest until patent issues;

An act approved March 4, 1913 (37 Stat. 828), creating similar appropriations for the fiscal year ending June 30, 1914, contains the following provision:

> *Provided,* That not to exceed $35,000 * * * may be expended under the direction of the Secretary of Agriculture for the examination, survey, and platting of certain lands now listed or to be listed within national forests chiefly valuable for agriculture and describing such lands by metes and bounds, as required (by the acts of 1899 and 1906 above mentioned), and hereafter such surveys, and the plats and field notes thereof, shall be made by employees of the Forest Service, to be designated by the United States Surveyor General, and such surveys and the plats and field notes thereof shall be approved by the United States surveyor general.

The provisions of the act of March 3, 1899 (30 Stats. 1095), differ somewhat from those of the act of June 11, 1906. They apply only to that portion of the Black Hills Forest Reserve as changed and enlarged by the proclamation of September 19, 1898 (30 Stats. 1783), which is in South Dakota, and are not considered herein.

Hitherto metes-and-bounds tracts to be listed under the act of June 11, 1906, have, in general, been marked on the ground by and in a manner customary with the Forest Service, and courses and distances between markings obtained by methods more or less accurate but sufficient for the purpose. This was followed by a different marking, astronomical methods, accurate chaining, practically closed surveys, and critical examination of tracts and settlements in relation to prior surveys and vested rights, for use at final proofs. Such a survey and field notes thereof in proper form for permanent records were only obtainable through your special instructions approved by this office in each case.

It is now proposed to have metes and bounds surveys for listings so made by the officers of the Forest Service that they may be used as the surveys required at final proof under the act. The method of special instructions is adopted.

The following regulations, prepared with special regard to existing conditions, are issued for your guidance. In view of the ultimate purpose of such surveys made under your direction, it is convenient to refer to them as entry surveys in sections 1 to 53 hereof. These regulations will form part of your instructions in each case, and a copy will be furnished to the executing surveyor.

1. The direction instrument is to be a transit with or without solar apparatus, or a solar compass, of approved form, the least count of all arcs being one minute or less.

Horizontal distances, as lengths of lines, connections, and distances to objects noted will be returned in chains and links, and measured with the usual surveyor's chain or steel tape of 66 feet, adjusted to standard and divided or graduated into 100 links.

Approval is extended to the use of long steel tapes in making measurements directly on the slope, including the use of clinometers in the determination of slope angles, the slope distances to be properly reduced to true horizontal distances for entry in the official field notes. The fact of the use of the long steel tape and clinometer method is required to be stated in the field notes.

Kind and description of instrument and measure and their tests will be stated in the field notes.

Approval is extended to a restricted and proper use of the stadia method of measurement over surfaces that can not be accurately measured with the steel tape. You will require that there be included in the field notes the record of the test of the stadia wire interval as often as once a week when used, and a statement in the notes of the essential features of every stadia measurement, but not the detailed process of each reduction.

Offsets and well-conditioned triangulation may be employed when necessary, and details and results must be recorded in the field notes.

2. As required by statute, courses and bearings of all directions are to be found by reference to a meridian astronomically determined, and that they are so derived must be specifically stated in the field notes. They are not to be found directly or indirectly at any stage by reference to the magnetic needle. The meridian will be either

determined or verified in connection with the specific survey in hand, or one already of record in your office may be used. From the meridian the compass bearings of directions, to the nearest minute of arc, will be found by necessary sustained angulation. The closing course of the survey thus obtained will be checked by direct reference to the meridian, and in case of discrepancy the series of courses will be examined and necessary correction made before leaving the field.

3. The meridian may be determined by a transit instrument from any of the astronomical observations authorized for use in regular surveys, in order of preference for this work as follows:

(*a*) Polaris at elongation, the latitude and star's declination being known. The latter may be had from the "Ephemeris," issued annually by this office. The latitude may be obtained from an observed greatest or least altitude of Polaris by properly applying refraction and polar distance; also from a meridian altitude of the sun's center, corrected for refraction and parallax, the declination being reducible from values tabulated in the Ephemeris when the longitude of the station is known with sufficient accuracy; also by account, that is, from the known distance, converted into arc, north or south, of a point whose latitude is known.

As tangency of the plane of collimation to the apparent path of the star is the phenomenon observed, time is required only for convenience. It may be derived from values tabulated in the Ephemeris by applying a part of the daily change proportional to the longitude of the station from Greenwich, and a small tabulated correction due to the difference of the latitude of the station from 40°.

Azimuth at elongation in any latitude within the range of tabulation may be had by simple interpolation from values in the Ephemeris.

This method is the best and simplest, and is preferred. The only objection is that times of elongation are often inconvenient. Three other methods free from this objection, permitted in the regular surveys, are given below. Their use should not be authorized, however, until your office is assured, through your instructions or other source, that the surveyor is practically familiar with them.

(*b*) Polaris at a known hour angle, latitude and declination being known. This method requires that the error of the timepiece on local mean time be known. The time may be obtained by one of three methods authorized for use in regular surveys, namely, transit of sun over a meridian previously determined, the equation of time being reduced from values tabulated in the Ephemeris; altitude observation of the sun when refraction, latitude, declination, and equation of time are known; or comparison with a standard time telegraphic clock when the longitude of the station is known.

The Ephemeris tabulates values whence the azimuth of the star at any time at any station between latitudes 30° and 50° north may be found when the correct local mean time is known. This method is preferred next to the preceding.

(*c*) Sun at an observed altitude, refraction, latitude, and declination being known. In reducing from the Ephemeris the declination at the instant of observation, local mean time and longitude must be known with sufficient accuracy.

(*d*) Sun at an observed equal altitude before and after noon, latitude being known, and the change in declination in the interval.

4. A single determination of the meridian is not sufficient. A second independent determination will be had, and in case of dis-

agreement exceeding two minutes, the series will be discarded and a satisfactory series obtained; otherwise the mean of the determinations may be used.

5. The record in the field notes of the twin observations, up to and including the resulting azimuth of the reference object and final marking of the meridian, must also state and show the derivation of time, latitude, and longitude used in the reductions. Detailed computations will be submitted on sheets separate from the field notes, which, after examination in your office, you will submit to this office with the returns.

6. Approval is extended to the use of a solar apparatus of approved form, in combination with a direction instrument, for determining meridians. Its use requires that the local apparent time and longitude be known with sufficient accuracy for reduction of declination and the refraction in declination or polar distance. To be considered in adjustment, an apparatus must hold the true meridian within two minutes of arc at all approved working hours with such an instrument, before and after noon, the testing meridian to be determined independently in approximately the latitude of the work in hand, by either of the three methods already mentioned. Such a test of recent date to the work in hand is to be recorded in the field notes. A partial test while the survey is in progress may often be had by an afternoon determination of a course ascertained in the morning, or vice versa, and such test should be of record. The action of the instrument and courses obtained should be checked by the angles of the survey independently read on the horizontal limb.

In field notes there should be recorded the details of at least one of the daily observations, that is, the local mean time and the latitude and declination settings. If the latitude setting, which must be that given by the apparatus at the station, is not the correct latitude, the index error should be stated.

7. A corner will be established at each change in direction of the boundaries of the entry survey, and if within regular surveys, at each intersection with the established section boundaries as these exist on the ground, distances being noted to the nearest regular corners each side.

The corners of a survey will be numbered consecutively beginning with No. 1. If within regular surveys, this number will be assigned to a regular corner, the same being a corner of the entry survey, or to an intersection with an accepted section boundary in good standing. In other cases the entry survey will be connected to the nearest corner of accepted regular surveys in good standing if within 2 miles, otherwise to a locating monument within the same distance, the latter to be connected to the nearest corner of regular surveys if within 2 miles; in either case the entry survey corner nearest to the point connected will be designated No. 1. The method of obtaining connections will be stated in the field notes, whether by direct measurement, random line, or traverse, with details of the latter.

8. It is essential that these surveys, unconformable to the regular system, be marked on the ground in the most permanent manner. A corner may consist of a durable stone not less than 24 inches long, set 14 inches in the ground, or a post of durable wood not less than 3 feet long, 3 inches square, set 24 inches in the ground, or a tree or rock in place. If the stone or post is longer than the minimum length mentioned, the extra length will be set in the ground. As

stone is preferred, a justifying remark should appear in the field notes when posts are used.

9. Corners will be neatly scribed or chiseled on the side facing the claim, for instance, 3–HES45, for corner 3 of Homestead Entry Survey No. 45; a like marking will be placed on suitable bearing trees, bearing objects, etc., with the usual symbols, B T, B R, etc. Each corner or bearing point will be defined by a nail, arrowhead, or other distinctive mark. Distances to bearing trees will be measured to centers, and scribings will be deep, and will read axially with the tree, with the B T as near the ground as possible, that the stumps may retain the markings should the trees be cut down.

10. Memorials of charcoal, marked stone, charred stake, or other distinctive material will be buried at the corner point when practicable, under the post or stone.

11. A corner will be witnessed by a mound of earth or stone, and additionally by two bearing trees (diameter to be expressed in inches), rocks, or objects when such can be had within 200 links of the corner point, selecting those that will best coordinately designate the point and in preference within the claim, and when these are not available that fact will be recorded and pits supplied; distances thereto will be recorded in links.

12.[g] Corner witnesses at intersections with established section boundaries will be according to the regular closing section corner arrangements, forms, and dimensions—see forms 1 and 2 pages 38 of the Manual of 1902—due regard being given to the direction of the closing line, as in section 67, page 30. If Figure 10, Plate IV, originally prepared to illustrate positions for a north direction, be turned about to correspond with the direction in which the closing line is being run, it will indicate a proper disposition of mound and pits relative to the corner point. In case of oblique intersection, see sections 68 and 69, page 30, remembering always that the section boundary is the line being closed to. Such corners will have the symbol C C in addition to the other prescribed markings, and will be included in the consecutive series of corner numbers for the entire survey.

13.[g] When corners at changes in direction of the boundary, not also intersections with established section boundaries, are witnessed by a mound and pits (of which there should be two), consider those portions of Figure 1, Plate V, which show the NW. and SE. corners of a reservation, as modified to state pits and mound of the dimensions and in the positions stated in the following corner description, and the diagram will then represent proper size and arrangement of witnesses for the conditions therein figured. In case of reentering angles the pits may be nearer the corner point, and in case of an interior angle less than 90° the pits may have to be placed more remote. The mound will be placed within the boundaries of the tract as surveyed, diagonally from the corner point, as shown in the figure.

Set a granite stone, 26 x 10 x 8 ins., 16 ins. in the ground, over a stone marked with a cross for cor. 3 of this survey, marked 3–HES45 on side facing the claim; no bearings, therefore dig pits, 24 x 24 x 12 ins., crosswise on this and the succeeding course, 7 ft. dist.; and raise a mound of earth, 4 ft. base, 2 ft. high, 3½ ft. dist., within the claim.

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[g] See secs. 255 to 347 of the Manual of 1919 relative to corner monuments and accessories.

14.[g] A meander corner will have the mound, and pit if any, on line, and of the dimensions and in position relative to the stone or post indicated in Figure 25, Plate IV.

15.[g] As it is not purposed to issue the Manual of 1902 for the limited use it would be in these surveys, you will prepare a suitable synopsis of the Manual sections mentioned, with sketches, in harmony with the three foregoing paragraphs, and issue with the special instructions in each case.

16. Where witness corners are employed, justifying conditions requiring them will be stated in the field notes. Such corners should be as near to the respective true points as those conditions, the method of construction adopted, and a regard for permanence will permit. There will be one on each of the two lines meeting at a true point for corner. If such a witness can not be established on line within three chains of the true point, some other and suitable position will be selected within that distance and preferably on the tract. Witness corners will be in all respects as corners at true points would be, with the additional symbol W C plainly marked. All details of description and of position relative to true points are to be recorded in the field notes.

Courses will run to and start from true points for corners, and the field notes must definitely so indicate.

17. When connection to a locating monument becomes necessary, a locating or mineral monument already established and of record in your office should be used if within 2 miles, it being desired to avoid unnecessary increase of disconnected reference points. Otherwise a locating monument should be established within that distance, of the substantial form, with witnesses, mound, bearing trees, bearing objects, etc., and in the position in the region, prescribed for mineral monuments concerning which the surveyors of the Forest Service appear to have been instructed. Proximity to the survey in hand is not the prime requisite in determining the location of such a monument; regard should be had to its convenient future use. When practicable it is desired, for obvious reasons, that the monument be connected by course and distance with other like monuments or surveys in the vicinity.

Except when a locating monument will not be required, you will furnish the surveyor with a number in your series of such monuments for his use in connection with the specific survey should occasion arise. If not used, the number may, in your discretion, be employed in connection with another survey. The letters U S L M and the number will be chiseled or cut on the side of the monument. Full record of the locating monument thus established should appear in the field notes, as to the circumstances requiring its erection, and its description, markings, position, bearings, and connections.

18. Corners or previously established monuments to which the entry survey is connected become by relation monuments of the survey, and as such should be left in good condition, the repairs being described in the field notes.

19. Important natural topography should be noted along the boundaries of and within and near the claim, with special regard to timber,

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[g] See secs. 255 to 347 of the Manual of 1919 relative to corner monuments and accessories.

streams, and soil; also natural curiosities, as fossils or organic remains; also ancient works of art, as mounds, embankments, etc.; also improvements of every kind on the claim, as to their position, nature, extent, value, and character of permanence; also the position, nature, and extent of easements held under statutes, as rights of way, etc.—in brief, all facts as to the claim and its surroundings ascertainable by survey should be noted and recorded.

Heights of hills, ridges, and banks of streams, depths of ravines, ascents and descents, size of buildings, and like dimensions should be recorded in feet.

Inquiry and field examination should be made to a reasonable extent as to the nonmineral character of the lands, and results stated in the field notes, especially when presumption to the contrary may arise through presence in the locality of known mineral claims, surveyed or unsurveyed; for, if the contrary is asserted and maintained as to any portion at any stage in the proceedings to patent, an amended survey will be necessary.

20. Field notes must state how and by what visible evidences the surveyor identifies on the ground as authentic the locating monuments and corners of prior surveys, used or referred to in the entry survey. If evidence found agrees with the description furnished by your office, a short form may be used; for instance, "Which is a ganite stone, showing 10 ins. above ground, marked and witnessed as described by the surveyor general"; otherwise the full description as found will be stated. Such agreement in description is not always or necessarily conclusive; and in cases of misclosure the supposed corner may be spurious, or at least not official, and its position should be checked by lines run to undoubted corners.

21. With other information you will furnish the surveyor with listed descriptions of all alien claims in the neighborhood of the survey, to the extent of your records. But such information is not necessarily conclusive or complete, and the surveyor will note the position of the survey relative to all near-by and contiguous claims of any nature as monumented on the ground, that may come to his knowledge, making connections and retracements necessary for the purpose, and state the owners' names if known.

22. When a roadway through a homestead is exempted from listing, it is not held to defeat one entry to embrace tracts thus separated. The tracts will be designated, "Tract A," "Tract B," etc. The limits of the road or roads will constitute the boundaries of the tracts, and will be surveyed and marked as such, retaining one consecutive series of corner numbers for the entire survey. Alinement of the boundaries intersected by the road will be preserved, and connecting distances thereon between the tracts will be noted.

A road exemption from a tract to be described as in section 32 will require a demarcation of the boundary of at least the components invaded by the exemption, as in the like case of a metes and bounds tract, requisite subdivision lines of sections involved being temporarily located preparatory thereto. And when field processes of such subdivisions render it convenient, other similarly described adjacent components may be included. The survey will receive a consecutive number in your series, and corners be marked accordingly.

23. When a portion of a stream or other body of water is a boundary of the tract, the same will be meandered at mean high-water

mark between terminal meander corners, by noting the general courses and lengths along the sinuosities, without monuments at each change in direction of the meanders so run. (Monuments at the angle points would give the lines between them the character of a boundary, which would limit the tract and thereby deprive the applicant of the rights usually attaching to water frontage.)

Also, in case it is intended to give an applicant the benefit of a water boundary and at the same time exempt a road along the bank, both sides of the road should be surveyed and monumented as herein prescribed, but in such a manner as to leave a strip of land to the applicant between the road and the meandered line, that the strip to which the benefits attach may appear upon the plat according to which patent is intended to issue.

24. Determination of the position of the metes-and-bounds survey relative to accepted section boundaries as these exist on the ground, including intersections therewith, and to section subdivision boundaries in certain cases, is incident to a complete survey. Without it segregations can not be made in your office when hereafter required. It may impose justifying retracements, and in some cases restoration resurveys and a limited section subdivision. Under normal conditions these will not be execessive. When extensive obliterations or gross inaccuracies in surveys are developed, the surveyor should make full report to your office through the proper channel, of conditions found and his thorough search for corners and their witnesses of record, including memorials, and await your further instructions. After considering facts and records, you may find it advisable to connect the metes-and-bounds survey to a locating monument and the latter to the nearest identified corner of the regular surveys involved.

25. The tract embraced in the survey must not exceed 160 acres in area, or 1 mile in length. If two or more contiguous listings are to be embraced in one entry, or in an entry and another "additional" to it under authorizing statutes, the total area and length are limited as stated.

In harmony with a recent communication from the department, in which the subject of proper widths and lengths of entry surveys was fully discussed, the following instruction is stated:

> Any tract not exceeding 160 acres in area which may be contained in a square mile, the sides of which extend in cardinal directions, is understood to be within the meaning of the law.

As it is also the instruction of the Forester in the National Forest Manual on Claims, etc., in effect February 1, 1912, and the application of the rule to four possible cases illustrated therein by sketches, it is not expected that surveys will be presented that you may not approve under the rule.

26. A survey must not embrace lands patented, and necessary retracements will be made to that end. Neither should it embrace other claims, surveyed or unsurveyed, or entered lands, unless with the full understanding on the part of the applicant that an amended survey will be required at his expense if necessary to eliminate conflicts not proper to be included in patent. Surveys should be conducted accordingly.

27. Conflict with another claim of any description will be ascertained by noting intersections with its boundaries, retracing the latter

for the purpose, and ascertaining the bearings and lengths of the boundaries of the conflict.

28. If the whole or any portion of the boundary of a legal subdivision, not also a section boundary, constitutes the boundary of a metes and bounds tract, the same will be temporarily located on the ground in accordance with the principles stated on pages 21, 22, and 23 of circular of June 1, 1909,[h] a copy of which should be furnished to the surveyor; and the field notes must describe in detail all random lines and fallings, retracements, measurements, offsets, and processes incident to such location, with the resulting course and length of the boundary so ascertained. Corners of the survey which are also quarter or sixteenth section corners will be additionally marked as such.

29. Should it be necessary for the completion of the survey to restore any missing official corner, in its original position always, such restoration will be made according to methods of the stated circular; and the field notes should fully describe an exhaustive search for the missing corner, including memorials if any, and for each and all of its witnesses of record, as well as the method and other details of its restoration.

30. Surveys will be made within suspended or unaccepted regular surveys in all respects as within accepted work, including closing corners and intersections, in order that data may be available for segregations should suspensions be removed or surveys accepted; and the status of the surveys, as accepted, approved, unapproved, suspended, etc., will be stated in the field notes in its proper connection. In those cases, however, connections will also be made to locating monuments or, in preference, to accepted official corners of the regular surveys in good standing, as if the suspended or unaccepted work did not exist. Should corrections subsequently be required of the suspended or unaccepted work, provision should be made at that time for a noting of the position of the entry survey relative to the corrected work, sufficient for segregation purposes.

31. Before leaving the field the surveyor should again read your instructions to ascertain that he has fully accomplished them. He should also test his survey for closure within the allowable limit of one three-hundred-and-twentieth, or 25 links per mile of perimeter, and make field corrections if necessary. Tabular statements of latitudes and departures, showing errors of closure, will be stated in the field notes. Submitted with the latter, but separate therefrom, will be a computation of areas, preferably by double meridian or double latitude distances.

If on surveyed land, the traverse and area computations will be separate for each section involved. In this case there will also be submitted with the field notes, but separate therefrom, like traverses involving the several connections, grouping with them in the traverses adjacent portions of the boundaries of the section and of the entry survey in such a way that traverses of the closed figures thus to be formed may best reveal the sufficiency of the entry survey and its agreement with established section boundaries as of record or retraced. Such traverses must close within the limit stated. In case of misclosure necessary and sufficient justifying retracements of the prior surveys should be made and used in the traverse submitted.

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[h] See pages 1440, 1441, and 1442 in this publication.

32. Unless there are road reservations (sec. 22), metes-and-bounds surveys are not required within accepted regular surveys in good standing when the tract to be listed is to be described by legal subdivisions, or as a quarter or a half of a quarter-quarter section or rectangular lotted tract, or as a quarter or a half of a quarter-quarter-quarter section or rectangular lotted tract. But survey is required of metes-and-bounds parcels to be included therewith in listing and entry, in which case statutory contiguity must be obtained by a preliminary location of those regular boundaries that are also to bound the metes-and-bounds tract.

33. Manifestly, the execution of the survey must be subsequent in dates to those of your instructions. The survey will be an actual, independent survey made at the time in all its details, and not computed or compiled from former surveys official or otherwise. When discrepancies are developed, the prior surveys should be sufficiently retraced, and details of the retracement and resulting correct courses and distances appropriately recorded in field notes.

34. Field notes are to be prepared only on paper of the quality, size, and ruling in current use for regular surveys. They may be in writing or typewriting, in noncopying ink, using both sides of the paper, and in form for binding on the side. To be acceptable they must be clerically neat, not crowded, unmistakably legible, and free from erasures, corrections, or interlineations. Cut sheets will not be accepted, or those upon which writing appears beyond the ruled margins or within one-half inch of top or bottom edge. The sheets will be temporarily bound by stitching or fasteners admitting of removal without injury to the papers when future binding in books is contemplated.

From the abbreviations authorized by the Manual of 1902, you will list to the surveyor only those which are applicable and convenient in these surveys, to the exclusion of all other abbreviations, and instruct, and when necessary illustrate their proper and consistent use, especially in corner descriptions.

35. Field notes will have the following general arrangements:

(*a*) The title page should eventually contain information of the character suggested by the following form:

[Acts of June 11, 1906, August 10, 1912, and March 4, 1913]

FIELD NOTES
of
Homestead Entry Survey No. 506
situated in the
Battlement National Forest
in
unsurveyed Section 30, Township 11 South, Range 93 West
and
surveyed Section 25, Township 11 South, Range 94 West
of the
Sixth Principal Meridian
COLORADO

Survey executed by John T. Monroe (state official designation).
Under special instructions dated August 15, 1910.
Survey commenced September 20, 1910.
Survey completed September 25, 1910.

Applicant for listing, James Brasher.
Application No. 704, dated June 27, 1910.
List No. ____, dated

(*b*) The caption on each page will be, for instance, HOMESTEAD ENTRY SURVEY No. 506: COLORADO.

(*c*) Brief preliminary remarks deemed necessary by the Forest Service, as to applicant for listing and date and number of his application, etc., followed by reference to your special instructions by date, homestead entry survey number, position of claim by section, township, and range, and whether on surveyed or unsurveyed lands, with name of national forest and the statutory authority, namely, the acts of June 11, 1906, August 10, 1912, and March 4, 1913, as the case may be.

(*d*) Commencing date of survey, and establishment of meridian of reference, with full data and results, as hereinbefore specified.

(*e*) Record of retracements, resurveys, and restorations of specific lines and corners, with dates.

(*f*) Temporary locating of required boundaries of legal subdivisions, with dates.

(*g*) These preliminaries being recorded, then will follow the field notes proper of the claim, commencing with corner No. 1, its full description, witnesses, bearing trees and objects, and connections. Record the magnetic declination at this point, measured from the true meridian, time of day to be stated, and the resulting mean declination deduced by aid of a brief table of diurnal variations for your district, which you will furnish, prepared from values tabulated in the Manual of 1894. Thence proceed with courses in consecutive order from corner to corner, around the entire tract, to the place of beginning. If a corner or boundary of the tract is identical with a corner of or on a line of another survey, or section line, or boundary of a legal subdivision, that fact should be stated. Descriptions of corners established and corners referred to or used; connecting lines; full details of triangulation, offsets, and traverses and results; chainage to topography on line; bearings and distances to improvements and other objects; intersections with prior surveys and conflicts therewith—these will be recorded in order in their proper places as the survey progresses from corner to corner. The date of each day's work will appear.

(*h*) Areas in acres (to two decimal places) of conflicts if any, portions in each section, and total area.

(*i*) List and descriptions of improvements, with approximate values.

(*k*) Description of the tract in respect of the character of the land, timber, water, use, and value for various purposes. Mineral or nonmineral character to have specific mention.

(*l*) Proximity of the tract to other like tracts, settlements, mining camps, centers of trade, townsites, and to officially surveyed mining or other claims and others not so surveyed but well known.

(*m*) Such other matters relative to the claim and its surroundings as are deemed proper and necessary to a complete report. Then will follow the concluding date of survey and the official signature of the surveyor.

(*n*) Traverses showing closing errors.

(*o*) Final affidavit of assistants, to be made before an officer qualified to administer oaths, or if one is not available, that fact will be stated and the affidavit made before the surveyor in his official capacity.

(*p*) Final affidavit of the surveyor, to be taken before an officer qualified to administer oaths and having a seal. The affidavit should have substantially the following form:

I, John T. Monroe (here state official designation), do solemnly swear that, in strict conformity with the special instructions of the United States surveyor general for Colorado, dated August 15, 1910, and the laws of the United States, I have well, faithfully, and truly, in my own proper person, surveyed a tract of land upon the application of James Brasher, No. 704, dated June 27, 1910, for listing under the act of June 11, 1906, the same to be known as Homestead Entry Survey No. 506, situated within the Battlement National Forest, in unsurveyed section 30, Township 11 South, Range 93 West, and surveyed section 25, Township 11 South, Range 94 West of the Sixth Principal Meridian, Colorado, and the related retracements and resurveys and section subdivisions, which are represented in the foregoing field notes as having been surveyed by me; and I further solemnly swear that all the corners of said survey have been established and perpetuated in strict accordance with the stated special instructions, and in the specific manner described in the field notes, and that the foregoing are the original field notes of such survey.

It is noted that the form of certificate of assistants, final oath of surveyor, and your approval, Form 4–679, may be followed, slightly modified, for these surveys.

36. Plats will be prepared on drawing paper at least equal in weight and quality to that in current use for plats of mineral surveys, on sheets of the size and with border prescribed for regular township plats, and to a suitably large scale in each case. The title may be brief and substantially as follows, for instance:

Plat of
Homestead Entry Survey No. 506
in the
Battlement National Forest
in
Section 30 (unsurveyed), T. 11 S., R. 93 W.
and
Section 25 (surveyed), T. 11 S., R. 94 W.
of the
Sixth Principal Meridian
COLORADO

37. In addition to the entry survey in detail, with its associated retracements and resurveys designated as such, section subdivisions, and connections, all "strictly conformable" to the field notes, the plat will also indicate near-by surveys, claims, and important topography.

38. If in a surveyed section, section subdivisions should be shown on the plat to an extent sufficient to indicate remainders of legal subdivisions invaded by the entry survey, but without areas and without lot numbers other than those already appearing on the plat of regular survey. After the entry has passed to patent, its survey and segregations created thereby will be shown with other patented areas on township plats subsequently prepared; and in these cases small portions of legal subdivisions consequent on segregations of patented mineral claims, that may be included in adjacent lots created by the entry survey, should be included if the resulting lot is of proper form and area. (See p. 74 of Manual of 1902.[1])

39. The status of surveys and protractions should be definitely stated on the plat; for instance, as patented, accepted, suspended, surveyed, unapproved, etc., as the case may be.

40. On the plat unsurveyed section lines will be indicated by broken lines, if their positions can be protracted with reasonable certainty. Surveyed section lines will be full, with courses and distances as of record, retraced, or restored. Mineral and other surveys may be shown in full lines, with corner numbers when advisable. Unsurveyed mineral or other claims, also section subdivision lines, will be dotted. The entry survey boundaries will be full and relatively heavier.

Lines should be appropriate in character and lettering simple in style and distinctive in size and form for the matters represented, that the plat may be correctly and easily read. Single-stroke letters and figures, not shaded, are preferred, to the exclusion of vertical and Roman forms.

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[1] Also see figures IX–4, and IX–5, pages 43 and 45, respectively, of the chapter on plats of the revised manual of 1928.

41. In tabular form, as on regular township plats, there will be stated the prior and entry surveys, executing deputy or other surveyors, contracts, group numbers, and special instructions with dates, dates of surveys and of approvals. Also in tabular form, there will be stated the areas of conflicts, portions in each section, and total area. Following these tables will be stated the list by number and date when known, and the latitude, longitude, and mean magnetic declination of and at some point of the survey, preferably at corner No. 1.

Within the outlines of the survey will appear, for instance, H. E. S. No. 506, with total area.

42. Your certificate to the plat will have the following general form, for instance:

> This plat of Homestead Entry Survey No. 506, situated in section 30 (unsurveyed) in township 11 south, of range 93 west, and section 25 (surveyed) in township 11 south, of range 94 west of the sixth principal meridian, Colorado, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved.

43. Cooperative procedure of your office and that of the district forester will be substantially as follows:

That officer will forward to you a list of surveyors of the Forest Service, accredited as trustworthy and competent for surveys of the character above described, to whom, if you find no objection, you will issue special instructions.

44. Upon receipt from the district forester of a request for instructions for the survey of a given tract by metes and bounds, under the stated act of June 11, 1906, you will ascertain from the local land office the reservations, and the entries, agricultural, mineral, etc., whose boundaries may have to be recognized or respected. You will also carefully consult the records of your office. With his request for instructions the district forester will, in his discretion, transmit two copies of a preliminary plat and field notes of the tract, together with any other facts or information which he may be able to furnish, which will be of service in preparing the instructions.

45. From information thus assembled, you will prepare special instructions for the entry survey, assigning thereto the succeeding number in your series of entry surveys, or if the series is not started, commence with No. 37. A number once assigned will not be used in connection with another tract or another application for the same tract. The instructions will be addressed to the accredited surveyor designated by the district forester, or if not designated at the time, the place for the name of the accredited surveyor will be left blank, the same to be filled in by the district forester in due course and your office advised.

The instructions will be accompanied by a diagram to a convenient scale, showing the assembled information, including courses, distances, etc., of prior surveys, also the approximate latitude and longitude as shown by your records, the same to be corrected by the surveyor according to the facts. Matters not conveniently representable on the diagram, as brief corner descriptions, and the conditions, status, and irregularities of prior surveys, should also be furnished to the surveyor.

46. You will refrain from instructing the surveyor in any matter strictly within the jurisdiction of the Forest Service. But it is in-

tended that your instructions be such as are necessary, yet sufficient, in each particular case for a survey and returns in all respects acceptable at final proof.

When the surveyor may easily err, the special instructions should not consist merely of reference to or quotations from these regulations or the circular of June 1, 1909; but you will clearly set forth the details of requisite operations in the light of conditions as far as known, and, in addition, fully advise, as far as practicable, what should be done if conditions are found to be otherwise. Your instructions should be specific, sufficient, and special.

47. You will transmit two copies of the special instructions and diagram and one of the two copies of the preliminary plat and field notes, if such are furnished by the district forester, to this office by letter, in which you will state the information assembled and discuss the special instructions in their relation to conditions presented.

Records will be consulted, the instructions examined, and one copy thereof returned to your office as promptly as possible. You will then transmit the instructions as approved to the district forester, with the request that he cause the survey to be made in strict conformity therewith, and in due course transmit to your office the requisite returns in prescribed form complete for your official action. The returns will consist of original field notes, two transcripts thereof, and plat in quadruplicate, with the associated papers already mentioned.

48. It is expected that, in the majority of cases, there will be no complications or conditions not sufficiently covered by this circular. For such surveys your instructions should be brief and formal. In many other instances the strictly special features will be quite simple. Judiciously select these two classes, and transmit to the district forester the instructions and information therefor, without prior submission to this office; but transmit a copy in each case for filing, and in your letter state your action under this section.

49. As returns are to be prepared by the Forest Service under your direction, it will be of manifest advantage in the cooperation, and it is so suggested, that the district forester, after an entry survey is checked in his office for limits of closing and statutory area and length, submit to you a preliminary draft of field notes and preliminary diagrams, sufficiently indicating contemplated forms of returns. These you will at once critically examine, indicate needed changes in survey, field notes, and plat, and return promptly to that officer, retaining a sufficient copy for convenience in examining returns. Your consideration of the draft and diagram is expected to be complete, that survey and returns may not need further change.

50. When received from the district forester, as above, the returns will be considered in the usual order of business in your office, unless otherwise directed by this office, and when found to be satisfactory, will be officially approved and certified by you as usual.

51. The original plat and field notes will remain in your files. The duplicate plat and one transcript of field notes will the transmitted to this office; they will be deemed to be the plat and field notes prescribed in the stated act of 1906 to be filed by the entryman. Upon advice of this office, you will transmit the triplicate plat and one transcript to the proper local land office for its files. At the same time you will transmit the quadruplicate plat to the local land office, to be supplied to the entryman when he applies to make final

proof, for posting on the claim as required by the act of 1906; this purpose will be stated in your letter of transmittal.

When the triplicate plat is transmitted, you will notify the district forester thereof.

52. With your letter transmitting transcript field notes and duplicate plat, you will inclose copies of any supplimental instructions you may have issued. And when such instructions are requested by the district forester, concerning which you are in doubt, you will submit to this office a full statement of conditions affecting the question presented and await advice.

53. The cooperative procedure above instructed has relation only to listing surveys intended as bases for individual entries. It does not apply to surveys for listings of larger metes-and-bounds tracts or tracts involving the extension of the regular system.

54. By the stated act of March 4, 1913, the unexpended balance of the appropriation of $35,000, for the current fiscal year, and a similar appropriation for the ensuing fiscal year, will be available also for surveys of lands already listed within national forests.

In respect of such listings and entries based thereon, your attention is directed to section 25 hereof and the construction therein stated of the statutory 1-mile limit. All instructions of this office inconsistent therewith are hereby recalled.

55. After June 30, 1913, such surveys by metes and bounds—that is, lands already listed—as are intended for use at final proof under the act of 1906, will be made by employees of the Forest Service under your direction and these regulations. This rule applies also to metes-and-bounds entries of lands which, since entry, are exempted from national forests, where the entryman is not, within the statutory final-proof period, allowed to amend his entry to conform to the usual legal subdivisions.

Surveys amendatory of existing listings, intended as bases for individual entries, including those to be bases for allowable amendments of entries already made, are sufficiently covered by preceding sections.

Surveys for final proof on entries based or to be based on listings not made under the cooperation plan of the acts of 1912 and 1913 will be subject to the following additional regulations; namely, such surveys can embrace only listed and opened lands. They must therefore be restricted to or within the boundaries of such lands as marked on the ground, or if not marked, to or within the boundaries intended by the Forest Service in the listing. That this restriction is observed, and how, should specifically appear in the field notes, with identifying descriptions of listing corners as found, and bearings and distances thereto when, for proper reasons, their positions are not occupied by entry survey corners. The listing corners have served their legitimate purpose when the tract is identified, and should be destroyed after positions are noted, the facts being recorded in the field notes.

The fact of entry will not require change in forms prescribed in section 35c, supra, of field notes, plats, affidavits, and approval; but the fact should be briefly mentioned in the preamble of the field notes, with name of entryman, local land office, serial, and date.

56. Applications from entrymen for metes-and-bounds surveys of their entries, received at your office subsequent to June 30, 1913, will

be treated substantially in like manner as requests for instructions from the district forester. In addition, however, to other relative information from the local land office (sec. 44), you will obtain details of listings and entries required in preparing special instructions in each case. Duplicate field notes and plats of most of the listing surveys already made are on file in this office, and will be transmitted on your request.

Of the provisions of the stated act of 1913 you will advise entrymen, for whom surveys have been authorized by this office but instructions not issued by your office, also applicants in the case of entry-survey applications now pending in your office or filed therein prior to July 1, 1913, and allow them to modify their applications, if they so desire, to request that the surveys be made by the Forest Service under these regulations, and upon such requests you will proceed as on applications submitted after June 30, 1913. Unexpended balances of deposits for office work will be returned to depositors upon application and your usual accounting.

57. Although the status of entered lands is different from that of lands to be listed under the cooperative plan, matters requiring your careful attention are not materially different, as surveys in each case must be sufficient for final proof. Therefore, reposing confidence in your judicious selection, you will proceed in these surveys also, as directed in sections 47 and 48 in respect of transmitting and submitting special instructions.

58. The preparation of returns being provided for as stated, the necessary office work in your office, connected with surveys under these regulations, will be performed by your regular clerical force without expense to entrymen.

59. A survey embracing lands proper to be entered and patented, to the exclusion of other lands, a sufficiently substantial and distinctive marking on the ground, and a concise but complete and correct record are required. These regulations are designed to embrace all requirements necessary and sufficient thereto. It is to be expected that details not specifically prescribed herein will vary, but unless obviously discordant therewith, they should not in general be regarded by you as necessarily subject to change (see sec. 49) or as a bar to your approval, thereby needlessly introducing delays and complicating procedure.

60. It is desired and expected that you will cordially cooperate with the district forester, and promptly acknowledge and respond to his proper requests for instructions and information, that he be not embarrassed in his field assignments or office work.

61. The first letter received from your office relative to an entry survey will be assigned a number by this office, which will also be assigned to all succeeding correspondence on the same subject. In reporting action, please state the authorizing letter. When mentioning a letter of this office, also state the date of your letter, if any, to which the office letter is reply; this is desired for convenient office reference, copies of replies to your letters being filed therewith.

Very respectfully,

Fred Dennett, *Commissioner.*

Approved.

Lewis C. Laylin,
Assistant Secretary.

CIRCULAR No. 376

INSTRUCTIONS IN RE PREPARATION OF FIELD NOTES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 25, 1915.

United States Surveyors General:

Instructions have been issued to the supervisor of surveys hereafter to cause all field notes of survey to be prepared for preliminary examination in abbreviated form, either in longhand or typewritten, giving full description of instruments used and of stellar and solar observations taken, but using standards abbreviations for corner description, items of topography, etc., so that the field notes may, after critical examination by your office force, be typewritten in extended form by an experienced transcriber in your office, who will make at the same time a good record carbon copy thereof on regular field-note paper.

The typewritten notes as so prepared will be examined by the surveyor or transitman executing the surveys or resurveys represented thereby, and if found correct will be sworn to by him and filed in your office as the original field notes.

The carbon copy will be transmitted to this office for the permanent records thereof. In making the carbon copies much care should be taken to make clean, distinct copies, which should be carefully checked and compared with the completed original before transmittal.

Permit me to urge you to take the particular pains to make the method a success, to the end that we may eliminate unnecessary duplication of work in the matter of note writing and at the same time produce a high-grade, uniform record.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

CIRCULAR No. 421

MINERAL SEGREGATION SURVEYS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 9, 1915.

United States Surveyors General.

GENTLEMEN: 1. The attention of the General Land Office has frequently been directed of late to the prevalence of misconception among surveyors general and others regarding the procedure to be followed in the execution of mineral segregation surveys authorized under paragraph 108 et seq. of the mining regulations.

2. Therefore, in order to secure uniformity of practice and to present a proper basis for intelligent action, this circular is issued. Its provisions will supersede all previous instructions with which they are in conflict, and will be adopted without reference to precedent or practice formerly permitted by this office.

3. There appears to exist a very general, although erroneous, assumption that because the surveys in question relate to the segregation of mineral land, are authorized by the mining regulations, and are usually executed by United States mineral surveyors they therefore partake of the nature of mineral surveys. That this is not the case will be evident upon consideration of the fact that the necessity for mineral segregation surveys arises almost exclusively with reference to "lands returned as agricultural and alleged to be mineral in character" (M. R. par. 101, sec. 2), where the survey—made at the instance, for the benefit and at the expense of, the homestead entryman—is designed solely to define the boundaries of, and provide a legal description for, the agricultural land for which application is made. The circumstance that such surveys are usually executed by United States mineral surveyors is without significance, as the regulations provide only that the work shall be done by "a reliable and competent surveyor to be designated by the surveyor general." (M. R., par. 108.) This would include county or other surveyors in private practice.

4. Authority for the survey having issued, and a surveyor having been designated by your office, the instructions addressed to him will particularly emphasize the fact that the survey is nonmineral in character, and as an aid to the preparation of such instructions, your attention is directed to the following considerations.

5. To all intents and purposes the segregation survey is ex parte procedure and confers no permanent rights or benefits upon the mineral claimant. The definition, in whole or in part, of the boundaries of the mining claim is merely incidental to the determination of the confines of the agricultural entry and the survey, which may involve the retracement and reestablishment of the public land lines and the subdivision of the section, is effective upon the mineral claim only as a location survey, permitting greater accuracy of description than is usually attained by the somewhat crude methods of the locator.

6. While a discussion in detail of the field procedure attendant upon the execution of mineral segregation surveys is beyond the purpose of this circular, and is a subject properly to be determined by your offices, after consideration of the conditions surrounding the individual case, the extent of the required operations is a question of such importance, as affecting not only the actual field work but also the method to be adopted for the subsequent office computations, that some comment thereon appears desirable.

7. As a preliminary to its consideration, however, it is proper to recognize the generally accepted principle that where any legal subdivision of the public domain is invaded by a segregation survey the former loses its identity as a unit of disposal, and the resultant fractional lots must depend for their area upon the data supplied by the survey, without reference to the stated area of the subdivision. This principle, while intrinsically sound, is found in practice to result in a refinement of little utility when applied to regular sections, whose closure is acceptable. Its observance is therefore frequently ignored, and this is true, in particular, where the segregation of patent mineral surveys is concerned, the procedure in such cases being merely that of office protraction and computation from the assembled mineral and township records.

8. The extent of any mineral segregation survey is dependent primarily upon the condition of the section or sections invaded as indicated by the actual alinement and measurement of the boundaries thereof. With this fact clearly in mind, and with an equal recognition of the nonmineral character of the survey, the surveyor will, after preliminary reconnaissance, readily determine the amount of field work required in any given case. It frequently happens that a direct connection of the mineral location by a tie or ties to convenient existing and identified corners of the public-land survey, followed by a survey of the out-boundaries of the mining claim or claims, thus presenting data equivalent to those supplied by a patent mineral survey, will, with the subsequent office protractions for area, be found adequate for the segregation, but this sufficiency is evident only when the section invaded is itself found to be actually conformable, within Manual limits, to the record thereof. In many other cases the actual condition of the section may be so far removed from that represented by the record that it would be impossible to assert even approximate accuracy for lot areas obtained by deducting the acreage of the mineral land, as determined by the survey, from the nominal area of the legal subdivision shown upon the township plat.

9. It is therefore apparent that the first duty of the surveyor is to determine by retracement the actual condition of the section invaded, and provision therefor should be embodied, in future, in your instructions. If the result is satisfactory, and a reasonable agreement with the approved record is indicated, he may then proceed with the segregation survey; and upon evidence of proper closure, your office may determine the resulting lot areas by protraction and deduction, with the assurance that no error in excess of allowable limits has been introduced. If, on the other hand, the retracement reveals radical defects in the section, and serious disagreement with the record, it will be necessary for the surveyor to subdivide the section, or so much thereof as is invaded by the mineral claims, restoring any lost corners, and locating such quarter-quarter-section corners as are required. The segregation survey will then be referable strictly to the conditions so defined, and the resultant lot areas will be calculated upon the basis of the data furnished by the survey, and not by reference to the nominal areas shown upon the township plat.

10. Where, however, it appears upon retracement that the absence of corners and the obliteration of other evidences of the original public-land survey is so general as to require extensive restorations and a search for controlling corners remote from the section or sections affected by the segregation, the execution of which would impose upon the entryman unreasonable hardship and expense, the designated surveyor will proceed only with the survey of the mineral location as provided in paragraph 8 hereof, and will upon transmittal of his returns to the United States surveyor general, report to that officer the conditions which precluded his completion of the survey. Upon receipt of such report, the United States surveyor general will, if the explanations thus submitted are acceptable, request authority from the General Land Office to employ the services of a United States surveyor for the resurvey and subdivision necessary to complete the segregation and determine the true condition

of the section or sections involved. It is believed, however, that the necessity for this procedure will not frequently arise, and you are advised that authority for such action will issue only in cases that are clearly exceptional.

11. Regarding the limit of error applicable to segregation surveys, it appears illogical to demand greater accuracy in the subdivision than obtains in the section itself, and therefore a limit of 1 part in 640 in latitude and in departure may be adopted, but the surveyor should strive to reduce the error in closure wherever possible. The considerations which require great precision in an official mineral survey are not present in these cases, but the establishment of the lines and corners of the mineral location should be attended by such care and exactness of execution that their position will not require revision by the patent survey which may follow. This is highly important for the reason that, while theoretically subject to such revision, the result in practice is the creation of small fractional areas of questionable utility for mining operations and yet excluded from the agricultural classification.

12. Upon completion of the survey, and the receipt by your office of the returns thereof, you will cause a critical examination to be made with reference to their accuracy and sufficiency. The field notes will be so prepared as to present; first, the record of the sectional retracement, restoration, and subdivision; second, the connection of the mineral location or locations therewith; and, finally, the record of the segregation survey proper—the latter to include a statement of the area of the mineral lands eliminated from each section. All measurements will be returned in chains and links. The title page and oaths covering the notes will be of the regulation township form (4–679, 4–680) and will contain such descriptive matter as is appropriate. One transcript of the whole will be prepared for the files of the General Land Office.

13. The plat of survey will be prepared in triplicate, and will be of standard township size. It will exhibit only the section or sections involved, and will display an appropriate title and certificate of approval. A scale of 10 or 20 chains to the inch is suggested as convenient. The plat will be rendered strictly conformable to the field notes of the survey and will present all essential data as to courses and distances (true lines) of sectional retracements and subdivision; boundaries of the mineral location or locations; ties, intersections, etc.; and will in all cases afford information sufficient for a determination of the areas of the fractional lots created.

14. The lots in question will be designated in the usual manner by consecutive numbers, beginning with that next higher than the series of the previous survey. Their areas will be calculated in strict conformity with the principles heretofore discussed; that is, by deduction of the returned and verified mineral area (which need not appear upon the plat) from the nominal area of the legal subdivision, where the section is in reasonable agreement with its record and requires no field subdivision, or, in the case of defective sections, by balanced traverses, based upon the actual field returns of the combined subdivisional and segregation surveys.

15. Upon completion of the office work and approval of the survey, the duplicate plat and transcript of field notes will be transmitted to the General Land Office for examination and acceptance.

16. Inquiries as to procedure in special cases, and the requests for instructions or explanation covering minor items of practice not herein noted, should be addressed to the Commissioner of the General Land Office in connection with the specific survey to which they are referable.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

SURVEYS OF RECLAMATION LANDS

DEPARTMENT OF THE INTERIOR,
Washington, March 23, 1916.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

DEAR MR. COMMISSIONER: I have your communication of February 19, 1916, recommending, in concurrence with the Director of the Reclamation Service, that the surveys required to segregate lands reserved for reclamation purposes be made by officers under your direction and paid for out of the regular appropriation for the surveying of public lands, and also that the subdivision of tracts into areas of less than 40 acres, which are to be irrigated, shall be surveyed and the cost thereof made and paid for in like manner.

The act of June 27, 1906 (34 Stat. 519), provides that—

> Whenever, in the opinion of the Secretary of the Interior, a lesser area than 40 acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the reclamation act, he may fix a lesser area than 40 acres as the minimum entry and may establish farm units of not less than 10 acres.

It further provides:

> That wherever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said reclamation act, the Secretary of the Interior may cause subdivision surveys to be made by the officers of the Reclamation Service, which subdivisions shall be rectangular in form, except in cases where irregular subdivisions may be necessary in order to provide for practicable and economical irrigation. Such subdivision surveys shall be noted upon the tract books in the General Land Office, and they shall be paid for from the reclamation fund.

Departmental regulations of June 1, 1912, provide in section 1, as follows:

> Whenever it may be necessary for the purpose of accurate description or economic irrigation to further subdivide the public lands to be irrigated or to segregate lands to be reserved or appropriated for reclamation purposes under the provisions of the reclamation act, the director of the Reclamation Service shall cause such surveys to be made under the following regulations.

The director states, with reference to the lands surrounding completed reservoirs, that in many instances only small portions of the regular survey subdivisions are used or needed for reclamation purposes, and the remaining portions should be restored to entry, but that the settlers in the several projects object to having the expense of such surveys placed upon them, as it is no benefit to the project to have the lands restored. The director, therefore, desires that these surveys be made by surveyors under your direction and the cost thereof paid from the appropriation for the survey of public lands.

It will be observed that the law provides that lands which are to be irrigated may be further subdivided by officers of the Reclamation Service, and that the cost thereof shall be paid from the reclamation fund. Therefore, the department has no authority to provide for payment for such surveys out of any other fund, but the law does not require the cost of surveys for segregating lands reserved for reclamation purposes, as distinguished from lands to be irrigated, to be paid out of the reclamation fund. The act is silent as to such lands. Hence, it will be proper for you to cause such surveys to be made and paid for out of the regular appropriation for surveying public lands. This arrangement will be provided for by amendment of paragraphs 1 and 5 of the regulations of June 1, 1912, and they are accordingly hereby amended to read as follows:

1. Whenever it may be necessary for the purpose of accurate description or economic irrigation to further subdivide the public lands to be irrigated under the provisions of the reclamation act, the Director of the Reclamation Service shall cause such surveys to be made under the following regulations.

5. Necessary retracement and restoration work shall be performed for the location of corners to which connections are to be made.

You will advise the director hereof.

Very truly yours,

Andrieus A. Jones,
First Assistant Secretary.

[Reported, 45 L. D. 603]

Circular No. 520

REGULATIONS GOVERNING APPLICATIONS FOR RESURVEYS UNDER THE ACT OF MARCH 3, 1909

Department of the Interior,
General Land Office,
Washington, D. C., January 13, 1917.

The following regulations are issued to govern applications for resurveys under the act of March 3, 1909 (35 Stat. 845), as amended by the joint resolution of June 25, 1910 (36 Stat. 884), authorizing the Secretary of the Interior to cause to be made such resurveys of the public lands as after full investigation he may deem essential to properly mark the boundaries of the public lands remaining undisposed of. They are prompted by a desire to conserve the funds now available for the execution of resurveys and to insure their expenditure in the manner most advantageous to the general public interest, and further to eliminate petitions which possess no intrinsic merit, without prejudice to the legitimate demands for resurveys contemplated by the said act.

The application when perfected under the following requirements should be submitted to the United States surveyor general of the district in which the lands are situated, or in case the United States surveyor general's office for that district has been abolished the petition may be transmitted to the Commissioner of the General Land Office at Washington, D. C.

The regulations are as follows:

1. As a general rule, and in the absence of any particular governmental purpose to be subserved, no township is eligible for resurvey unless title to at least 50 per centum of the area of the lands embraced therein remains in the United States. For the purpose of determining the eligibility of a township under this rule, lands covered by approved selections, school sections, and entries upon which final certificates or patents have been issued are to be considered as alienated lands. Townships within the primary limits of railroad land grants are generally ineligible.

2. The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action, based either upon general obliteration of evidences of the original survey or upon conditions so grossly defective as to preclude the possibility of a reasonably certain identification of the subdivisions of the subsisting survey or a satisfactory local restoration thereof.

3. A majority of the settlers in each township are required to join in the application and in addition there must appear the indorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. Where an entryman or owner, including the State, has failed for any reason whatsoever to join in the application, evidence of service of notice upon him for at least 30 days in advance of the filing of the application is required in order that he may be afforded ample opportunity to make timely protest against the granting of such resurvey if in his opinion such action is undesirable.

4. Applications for the resurvey of each township must be supported by evidence in the form of an affidavit, preferably from the county or other competent surveyor, showing in detail that the evidences of the original survey have been obliterated to such an extent as to make it impracticable to apply the suggestions of the circular issued by this office for the necessary restoration of the lines and corners in the proper identification of the legal subdivisions occupied by the present or prospective entrymen or that the original survey is so grossly defective as to preclude the possibility of identifying or restoring the boundaries of the sections.

5. In general, no resurvey will be undertaken unless the preliminary examination of the township develops evidence of existing settlement and agricultural possibilities sufficient to support the presumption that the unappropriated lands therein are such as to attract bona fide entrymen, thus eliminating townships which, although theoretically eligible, are of such a physical character that the resurvey thereof would serve no useful purpose.

If upon receipt of the application the necessity for the resurvey is made apparent and the township is shown to be eligible therefor, a United States surveyor will be assigned under appropriate instructions to make an actual field examination to verify the correctness of the applicants' allegations upon which the resurvey petition rests, and if the report of his investigation establishes the necessity for an official resurvey the matter will then be laid before the Secretary of the Interior with a request for authority to proceed with the actual field work.

GENERAL

In the application of the terms of this act it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyors, and the authority of the surveyor general's office will be limited to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Government are prohibited from participating in the resurvey of a township, the reestablishment of lost corners, or in the subdivision of sections for private parties, even if the expense is borne by the county or municipal authorities or by individuals. To permit any such procedure would bring the Government into controversy with parties who feel aggrieved at the conclusions reached and would make the Government a party to various suits involving lands in private ownership in which it was not a real party in interest by virtue of ownership in the lands affected, and would ultimately extend to such calls for assistance from owners of private lands in settling their disputes as could not be met without detriment to the purpose for which the appropriations under the control of this office are made.

The Government's real interest in the resurvey of the public lands is well stated in the said act of March 3, 1909, "to properly mark the boundaries of the public lands remaining undisposed of." Its duty being thus defined, this office has consistently refrained from attempting to do more in the location of corners of privately owned lands in townships being resurveyed than to place such corners where the surrounding evidences of survey unquestionably point to one conclusion as to the proper place for the reestablishment of a lost corner and, if conflicts arise out of the undisputed location of such corners, to survey out the claims by metes and bounds, showing the resulting conflicts and leaving the adjudication of the question to the local courts having jurisdiction over the lands involved.

The duty of this office in making resurveys may therefore again be stated to be the proper marking of the boundaries of the public lands remaining undisposed of, and this only after full investigation as to the necessity therefor.

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 46 L. D. 504]

Circular No. 629[4]

REGULATIONS GOVERNING APPLICATIONS FOR RESURVEYS UNDER THE ACT OF SEPTEMBER 21, 1918

Department of the Interior,
General Land Office,
Washington, D. C., December 20, 1918.

The act of Congress approved September 21, 1918 (40 Stat. 965), provides authority for the resurvey by the Government of townships heretofore held to be ineligible for resurvey under existing departmental regulations by reason of disposals in excess of 50 per cent of the total area thereof.

Briefly, the act provides that upon the application of the owners of three-fourths of the privately owned lands[5] in any township previously surveyed, or upon the application of a court of competent jurisdiction, accompanied by a deposit of funds sufficient to cover the estimated cost, inclusive of the necessary office work, of the resurvey of all of the privately owned lands in such township, the Commissioner of the General Land Office shall be authorized, in his discretion, subject to the supervisory authority of the Secretary of the Interior, to cause to be made a resurvey of the township in question in accordance with the laws and regulations governing surveys and resurveys of the public lands; the cost of the resurvey of the residue of the public lands in such township to be paid by the Government from the current annual appropriation for the survey and resurvey of the public lands in addition to the portion thereof made available for resurveys and retracements by the provisions of the act of March 3, 1909 (35 Stat. 845), as amended by joint resolution of June 25, 1910 (36 Stat. 884). The total cost of the resurvey of the township is thus divided between the Government and the petitioners in proportion to the extent of their respective holdings.

It is further provided that any portion of such deposit in excess of the actual cost of the field and office work incident to such resurvey of privately owned lands shall be repaid pro rata to the applicants for resurvey or to their legal representatives.

Attention is directed to the fact that the legislation contained in this act is supplemental to, and is in no sense a repeal or a modification of, similar legislation heretofore enacted, and, consequently, applications for resurvey under the provisions of the act of March 3, 1909, will, when submitted in accordance with the regulations (Circular No. 520) of January 13, 1917 (45 L. D. 603), be received and acted upon as usual.

Applications for resurvey based upon the provisions of the act of September 21, 1918, should, when perfected under the following requirements, be submitted to the United States surveyor general for the district in which the lands are situated, or in case the United States surveyor general's office for that district has been abolished, the petition may be transmitted to the Commissioner of the General Land Office at Washington, D. C. An exception to the foregoing rule occurs in the case of the State of Nebraska, where applications should be filed with the assistant supervisor of surveys at Neligh, Nebr. Prior to filing formal application, however, the interested parties should obtain from the proper officer, as above designated, an estimate of the cost of the proposed resurvey. (See sec. 4.)

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[4] See Circular No. 630, p. 124.

[5] For the purpose of the administration of this act, lands embraced in school sections, in approved State and railroad selections, and in entries upon which final certificates or patent has issued are regarded as alienated lands.

In general, all preliminary correspondence and all requests for information as to status and progress should be addressed to the proper surveyor general, and such inquiries should not be referred to the Commissioner of the General Land Office unless the district is one in which the office of the United States surveyor general or its equivalent is no longer maintained.

The regulations are as follows:

SECTION 1. The applicants for resurvey are required to preface their petition by the statement that the extent of privately owned lands within the township is in excess of 50 per cent of the total area thereof. If necessary, information in this connection may be obtained by the petitioners from the register and receiver of the district land office having local jurisdiction.

Failure to comply with the foregoing condition, or material error in the showing made, will not only result in delaying action upon the petition, but may require its rejection if it is found that the township is not properly subject to resurvey under the terms of the governing act.

SEC. 2. The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action. In general, it must be shown that the evidences of the original survey are so widely obliterated or that the prevailing survey conditions are so grossly defective as to preclude the satisfactory identification of the subdivisions of the subsisting survey or that the evidences of the original survey are in such an advanced state of deterioration that action looking to their preservation and perpetuation is expendient as in the public interest.

SEC. 3. The owners of three-fourths of the privately owned lands within the township are required to join in the application, and all petitioners in whom ownership is vested, either individuals, the State, or corporations such as railroad companies whose interests are involved, are further required to supply, following their respective signatures, an accurate description by legal subdivision, section, township, and range, of the lands to which title is claimed. Moreover, it must appear that notice of the proposed resurvey has been served upon all owners who have for any reason failed to join in the petition, and, in addition, it is highly desirable that all record entrymen who, under the terms of the act are not required to become parties to the petition, be similarly informed to the end that their objections, if any, may be heard and subsequent protest based upon the plea of ignorance may, in so far as possible, be avoided.

SEC. 4. The deposit required of the petitioners by law must accompany the application and must be made in the amount, at the place and in the manner prescribed by the instructions which will accompany the estimate previously secured from the surveyor general or other appropriate officer.

Upon receipt by the proper district officer of an application conforming to the foregoing requirements, he will, after due consideration, transmit the same to the General Land Office with such recommendations as he may deem appropriate. In general, a preliminary field examination will be authorized by the commissioner in order to verify the correctness of the allegations upon which the resurvey petition rests and for the further purpose of determining the technical procedure which should properly be adopted under the existing field conditions, and the probable effect thereof upon the rights involved, unless the showing made by the petitioners, when considered in connection with the information made available by the records of this office, is such as to indicate that field examination may properly be waived. Inasmuch, however, as the purpose of such investigations is largely administrative, the expense thereof, when authorized, will be defrayed from the current annual appropriation for surveying the public lands, and no portion thereof will be charged against the deposit made by the applicants.

GENERAL

The cost of resurvey procedure is as a rule considerably in excess of that incident to the execution of original surveys and may range between rather wide limits. Where the obliteration is not excessive and the evidences of the original survey are harmoniously related, extensive verifying retracements will be unnecessary and ordinary dependent methods of resurvey can usually be applied. In such cases, the expense involved will probably not exceed $1,200 per township. If, however, the obliteration is general or total, many miles of preliminary retracement may be required in order to obtain technical control, and where, by reason of errors in the original survey, the existing evidences thereof are discordant and conflicting locations have resulted, the procedure required may, in the case of densely entered townships, involve an expense of $3,000 or more per township.

The applicants for resurvey should understand, therefore, that although the estimate supplied by the surveyor general will be as nearly correct as the available information will permit, its accuracy can not be guaranteed, and, consequently, all such estimates are subject to revision, if necessary, as the work proceeds and the field conditions are more fully developed. Any deposit in excess of actual cost will be returned to the applicants as provided by law, but in cases where the cost exceeds the deposit made in accordance with the estimate, an additional deposit will be required, failing which, operations will be suspended.

In the application of the terms of this act it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township—such work being within the province of the local surveyor—and the authority of the surveyor-general's office will be restricted to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Government are prohibited from participating in the resurvey of a township or the reestablishment of lost corners or in the subdivision of sections for private parties, even if the expense is borne by the county or State authorities or by individuals, except as such action is specifically authorized by the Commissioner of the General Land Office in accordance with the provisions of the existing statutes.

Attention is directed to the fact that whereas the expressed purpose of the resurveys authorized by the act of March 3, 1909, supra, is primarily "to properly mark the boundaries of the public lands remaining undisposed of," the evident intent of the legislation now enacted is to reestablish the boundaries of those lands title to which has passed from the United States. The technical process and the results attained are substantially identical under either act, but the administrative procedure and the regulations necessary to safeguard the interests of the Government and those of the petitioners are dissimilar, and, consequently, it is important that the foregoing distinction should be clearly recognized by the applicants for resurvey to the end that the petition may be based upon the legislation under which the township is eligible.

Clay Tallman, *Commissioner.*

Approved.

Alexander T. Vogelsang,
First Assistant Secretary.

[Reported, 47 L. D. 342]

ORDER IN RE ISSUANCE OF PATENTS FOR LANDS EMBRACED IN TOWNSHIPS THE SURVEYS OF WHICH HAVE BEEN SUSPENDED IN CONTEMPLATION OF RESURVEYS

Department of the Interior,
General Land Office,
Washington, March 1, 1920.

To Chiefs of Divisions of the General Land Office.

Sirs: By a circular of this office promulgated under date of December 28, 1914 (No. 369), it was directed that, where an entry had been made of lands in a township the survey and plat of which had been subsequently suspended pending a resurvey, and where the entryman had, prior to such suspension, fully earned title to said land, patent would be granted, notwithstanding such suspension, but that in all other cases final certificate only would issue, indorsed in manner so as to refer to the pendency of a resurvey, patent to be delayed to await completion of such resurvey.

Following further and recent consideration of the subject matter of said instruction, it has been determined that the actual and certain prejudice resulting to entrymen of such lands from long delayed issuance of patents is more to be avoided than are such apprehended or real difficulties as may arise from abrogation of the practice prescribed by the above-mentioned circular.

Said Circular No. 369 is, therefore, now and hereby canceled and vacated. In all cases now pending or hereafter presented in which an entry has been made pursuant to a recognized public land survey and plat thereof, suspension of such survey shall not be permitted to delay procedure by the entryman for the perfection of his said entry, nor the issuance to him of a patent, whenever and as soon as he has otherwise established his right to such patent. In all such cases any patent so issued will describe the granted land in accordance with the plat of survey pursuant to which entry was made.

CLAY TALLMAN, *Commissioner.*

Approved March 1, 1920.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

CIRCULAR NO. 880

USE OF IRON POSTS IN FOREST HOMESTEAD ENTRY SURVEYS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 10, 1923.

United States Surveyors General.

GENTLEMEN: Provision was made for the use of iron corner posts for homestead entry surveys by letter " E," dated February 10, 1916, addressed to the Forester, Forest Service, but details as to marks were omitted. As the use of the standard iron corner post, with concrete core and brass cap, for monumenting such surveys, is becoming general, it becomes necessary to devise a system of marks to furnish a ready identification of the character and position of the monument which bears the marks. Obviously the marks must be in harmony with the requirements of Circular No. 235, sections 7, 9, 12, 13, 14, and 16.

The markings upon the brass cap on an iron post should always be made to read from the south side of the monument, and all posts should be marked with the year number at the date when established, which should appear in the south segment of the cap. Above the date will be cut a diagram representing the lines of the survey involved. The numbers, designating the corner and the survey, will be cut, with appropriate steel dies, in that sector of the cap's diagram which faces and represents the tract of the survey.

The accompanying diagram illustrates the desired markings for all the corners of entry surveys.[j] Where, due to a road-exemption strip, two or more tracts are involved in the survey, it will be unnecessary to add to the marks the alphabetical designation of the tract, as all corners are numbered serially regardless of tracts.

Some confusion exists as to the placement of pits (the mound of earth is no longer required) when used as accessories for closing corners. To avoid this, it is only necessary to remember that the closing line is always the line of the entry survey, which closes upon, or is projected from, the section line. Three pits, 18 inches square, 12 inches deep, are required; one on the closing line and one each to the right and left of the corner monument on the section line (or whatever line is closed upon) at a distance of 3 feet, measuring from the nearest side of the pit; the removed earth will be scattered. No pit should be dug in a roadway, or in ground where the surface conditions are such as to insure their destruction, or where suitable stone for a mound is at hand.

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[j] The diagram which accompanied Circular No. 880 has not been reproduced. Instructions governing the marking of corner monuments are contained in secs. 255 to 315 of the Survey Manual of 1919.

While the Forester, in his letter of August 28, 1915, suggested an iron pipe, 3 feet long, 2 inches in diameter, filled with concrete, with 2¼-inch bronze cap, the use of such a post 1 inch in diameter, set three-fourths its length in the ground, will be satisfactory, the Forest Service concurring.

Very respectfully,

William Spry, *Commissioner.*

Circular No. 942

HOMESTEAD SURVEYS UNDER THE ACT OF JUNE 11, 1906

Department of the Interior,
General Land Office,
Washington, June 13, 1924.

United States Surveyors General.

Gentlemen: (1) Future special instructions issued for homestead entry surveys under the act of June 11, 1906, and the current appropriative act, for the segregation of entered land, will include a statement from the register and receiver of the proper land office, to be furnished, with two carbon copies, at your request, describing the land as entered and giving the status of the adjoining land.

(2) When a boundary of patented land, designated by the legal subdivisions of existing surveys, is identical with a boundary of the entry survey, it is necessary that the corners of the sectional subdivision defining such common boundary be actually established upon the ground. In addition to the proper marks as the corner of the legal subdivision, such corner will receive the serial corner number of the entry survey, nothwithstanding a change of direction is not involved.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 50 L. D. 644]

Circular No. 961

REGULATIONS GOVERNING SURVEY OF UNSURVEYED LANDS APPLIED FOR UNDER THE ACT OF OCTOBER 2, 1917 (40 STAT. 297), AUTHORIZING EXPLORATION FOR AND DISPOSITION OF POTASSIUM—AMENDATORY OF CIRCULAR NO. 594

Department of the Interior,
General Land Office,
Washington, September 24, 1924.

Registers and Receivers, United States Surveyors General, Supervisor of Surveys.

Gentlemen: In order to establish a uniform procedure for the survey of unsurveyed lands to be included in any potash patent under authority of the act of October 2, 1917 (40 Stat. 297), the following regulations will be observed and all existing regulations in conflict therewith are hereby rescinded and rendered of no effect to the extent to which they conflict:

(1) When application for patent is approved, involving unsurveyed public lands, the United States surveyor general of the State or district in which the lands are situated will be requested to prepare an estimate of the cost of surveying the sections in which the claim will probably be situated, notify the General Land Office and the applicant thereof, and instruct the latter to make a deposit, conformable to the estimate, with the surveyor general.

(2) The surveyor general will receive and receipt for the deposit when made and hold the money as a trust fund. He will thereupon prepare and submit to the General Land Office for approval special instructions providing for the subdivision of the township in its entirety in which the claim is situated, the expense of the field work to be paid from the regular appropriation for surveying the public lands.

(3) When the survey is accepted and the plat filed in the local land office, the claim will be adjusted to the resulting subdivisions as shown upon said plat. The cost of surveying the particular lands included within the claim thus adjusted will be ascertained by prorating the total cost of surveying the township to the area thereof. The amount thus ascertained will be deducted from the claimant's deposit and credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor, his assign, or legal representative. An additional deposit will be required when necessary.

Thus each claimant will be required to pay for surveying only the lands to be included in his patent and at the same time the survey of the public lands will be carried forward under the rectangular system, township by township, as contemplated by law.

Very respectfully,

William Spry, *Commissioner.*

Approved September 24, 1924.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 112]

Circular No. 996 [6]

INSTRUCTIONS AS TO THE ABOLISHMENT OF OFFICE OF SURVEYOR GENERAL—REORGANIZATION

Department of the Interior,
General Land Office,
Washington, April 7, 1925.

To the Surveying Service of the General Land Office:

The act of Congress approved March 3, 1925 (43 Stat. 1141, 1144), making appropriations for the Department of the Interior for the fiscal year ending June 30, 1926, and for other purposes, provides as follows:

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[6] See Circulars Nos. 996 (Supplemental), p. 1478, 1023, p. 140, and 1114, p. 1390.

> The office of surveyor general is hereby abolished, effective July 1, 1925, and the administration of all activities theretofore in charge of surveyors general, including the necessary personnel, all records, furniture, and other equipment, and all supplies of their respective offices, are hereby transferred to and consolidated with the Field Surveying Service, under the jurisdiction of the United States Supervisor of Surveys, who shall hereafter administer same in association with the surveying operations in his charge and under such regulations as the Secretary of the Interior may provide.
>
> *Surveying public lands.*—For surveys and resurveys of public lands, examination of surveys heretofore made and reported to be defective or fraudulent, inspecting mineral deposits, coal fields, and timber districts, making fragmentary surveys, and such other surveys or examinations as may be required for identification of lands for purposes of evidence in any suit or proceeding in behalf of the United States, under the supervision of the Commissioner of the General Land Office and direction of the Secretary of the Interior, $840,290: *Provided*, That the sum of not exceeding 10 per centum of the amount hereby appropriated may be expended by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, for the purchase of metal or other equally durable monuments to be used for public-land survey corners wherever practicable: *Provided further*, That not to exceed $10,000 of this appropriation may be expended for salaries of employees of the field surveying service temporarily detailed to the General Land Office: *Provided further*, That not to exceed $15,000 of this appropriation may be used for the survey, classification, and sale of the lands and timber of the so-called Oregon and California Railroad lands and the Coos Bay Wagon Road lands: *Provided further*, That not to exceed $50,000 of this appropriation may be used for surveys and resurveys, under the rectangular system provided by law, of public lands deemed to be valuable for oil and oil shale.

By this legislation the entire surveying service of the General Land Office is brought under the immediate jurisdiction of the supervisor of surveys, who is charged with the administration of all matters pertaining to that service under the supervision of the commissioner and direction of the secretary.

In furtherance of the consolidation of the surveying service, the secretary has directed that the Division of Surveys of the General Land Office be under the general supervision of the supervisor of surveys, who, under the commissioner, shall prescribe the methods and procedure to be followed.

PUBLIC LAND SURVEYS

With this single surveying organization to perform all field and office duties—administrative, engineering, fiscal or otherwise—ranging from the inception of a survey to its acceptance, the following regulations will govern:

Applications by settlers for original surveys will be the subject of appropriate investigation by the direct cadastral engineer (formerly the assistant supervisor of surveys), and if the survey is found to be merited special instructions will be prepared at once. Other surveys to cover lands of known agricultural value, or deemed advisable from an administrative standpoint, will also be made the subject of original consideration by the district cadastral engineer, and covered by appropriate special instructions to be prepared at once. All special instructions must be submitted to the General Land Office for examination. The approval of the special instructions by the General Land Office will carry with it the authorization for the survey.

Upon completion of the surveys in the field, township by township, formal report will be made to the General Land Office of that fact, in lieu of the monthly progress report system now in use.[7]

Under the corps of competent engineers now constituting the field surveying service, and the close supervision exercised by the supervisor of surveys and the district cadastral engineers, the resulting surveys should be of a high standard, requiring but a single examination and review to test the sufficiency and accuracy of the work. This examination will be made under the supervision of the district cadastral engineer, and will cover both the field and office features of the accomplished work.

All surveying returns now prepared for the approval of the surveyor general, or ex-officio surveyor general, will, after June 30, 1925, be prepared for the approval of the supervisor of surveys, and when so approved will be forwarded to the General Land Office.

Upon receipt of the returns by the General Land Office, the survey will be formally accepted without further examination, unless, by reason of special or unusual conditions attending any particular case, the commissioner deems it advisable to further scrutinize the returns or test the accuracy of the work.

The existing practice and procedure of handling resurveys and special surveys will be continued.

MINERAL SURVEYS

The appointment of United States mineral surveyors is under the jurisdiction of the supervisor of surveys, and all such appointments will be made by him under such rules and regulations as he may prescribe.

Orders for the survey of mining claims will be issued by the office cadastral engineers (formerly the technical and administrative head of the surveyor general's office force) who will be authorized by the supervisor of surveys to administer the work in connection therewith and approve plats and field notes of such surveys, and otherwise to perform the duties prescribed by the mining regulations to be performed by the surveyors general in connection with the survey of mining claims, including certification as to expenditures made upon the claims.

ACCOUNTS [8]

The discontinuance of the office of surveyors general on July 1, 1925, necessitates a change in the method of handling accounts, allotments, and disbursements.

Subject to the provisions of the appropriation act that 10 per cent of the amount appropriated may be expended for the purchase of metal monuments, $10,000 for salaries of employees of the field surveying service temporarily detailed to the General Land Office, $15,000 for the survey, classification, and sale of the lands and timber of the so-called Oregon and California Railroad lands, and $50,000 for surveys and resurveys of oil and oil-shale areas, and deducting

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[7] See supplemental instructions, p. 1478.

[8] See amendment, p. 140.

$3,500 for stationery, as provided for elsewhere in the act, all matters pertaining to the accounts, allotments, and disbursements will be handled in the office of the supervisor of surveys, at Denver, with the single exception of Alaska.

The administration of all activities assigned by law to the surveyors general must continue until the close of business on June 30, 1925, but it is believed that the other duties now discharged by these officers, especially in the matter of the disbursements and accounts incident to the execution of the public land surveys in the field, should be taken over by the supervisor of surveys at the earliest opportunity in order that difficulties may be avoided at the end of the fiscal year.

Until June 30, whether vouchers are paid in Denver, or by the respective surveyors general, they will be posted on the cost records in the office of the surveyor general. Thereafter, vouchers to be paid by the special disbursing agent under the centralization plan will be sent to the district cadastral engineer, through the office cadastral engineer, in whose office the vouchers will be posted on his cost-keeping record, and the fact of such posting evidenced by the office cadastral engineer's initials over the space for the district cadastral engineer's signature as approving officer.

To the end that prompt payment may be made of the many vouchers coming to a central office, it will be expected that each district cadastral engineer will, before approving a voucher, give it such an examination, or require such an examination to be given by some one under his supervision, as shall insure that the voucher is in proper form, properly signed by the claimant and certified, extensions carefully carried out, and that it represents duly authorized and unpaid expenses, or, if not already authorized, that a full statement of the facts and a specific recommendation in the matter is attached.

Any special deposits that are not to go into the Treasury and be advanced therefrom as an appropriation, such as special deposits for resurveys (act of September 21, 1918, Circular No. 630), special deposits for potash surveys (act of October 2, 1917, Circular No. 961), and deposits for oil lease surveys (act of February 25, 1920), will be made with the special disbursing agent, who will deposit them with the Treasurer to his official credit (Form 6599) and disbursed or otherwise disposed of in accordance with instructions.

Each office cadastral engineer will be required to file a bond and will receive and receipt for moneys tendered for office work (transcripts, copies of records, plats, etc.), including office work in connection with mineral surveys, and for sales of Government property. Such moneys, together with the duplicate receipts, will be forwarded to the special disbursing agent at Denver. At the end of each month the special disbursing agent will be furnished with an abstract of all collections and of moneys to be returned or applied on account of office work not in connection with mineral surveys. No other accounting will be required of the office cadastral engineer.

The special disbursing agent at Denver will account for the moneys received for office work not in connection with mineral surveys in accordance with Circular No. 483, and for proceeds of Government property in accordance with paragraphs 156, 187, and 188 of Circular No. 616. Moneys received on account of office work in connection with mineral surveys will be deposited by the special disbursing agent to his personal credit, and refunds will be made on direct settlement, as at present, in accordance with the act of February 24, 1909 (35 Stat. 645).

Very respectfully,

William Spry, *Commissioner.*

Approved April 7, 1925.

E. C. Finney, *Acting Secretary.*

Circular No. 996 (Supplemental)[9]

Department of the Interior,
General Land Office,
Washington, June 16, 1925.

To all District Cadastral Engineers and Division Inspectors, General Land Office.

Gentlemen: Circular No. 996, approved April 7, 1925, which deals generally with the subject of reorganization, provides, in that portion which relates to the execution of original official surveys, that:

> Upon completion of the surveys in the field, township by township, formal report will be made to the General Land Office of that fact, in lieu of the monthly progress report system now in use.

In reporting under the foregoing paragraph, the district cadastral engineer will prepare his letter of advice in triplicate, the original and one carbon to be forwarded to the Commissioner of the General Land Office and the third copy to be transmitted directly to the division inspector having appropriate local jurisdiction. Where less than a full township is involved the report will list any and all school sections embraced therein.

Upon receipt of such notification the division inspector will take appropriate action looking to examination and report with a view to classification of the lands, with particular reference to the school sections affected, subject, however, to such instructions as may be received from the General Land Office with reference to forest or other withdrawals which would render field examination unnecessary.

Very respectfully,

William Spry, *Commissioner.*

[Reported, 51 L. D. 279]

Circular No. 1042[10]

INSTRUCTIONS RELATIVE TO PROCEDURE IN PUBLIC SURVEY OFFICES—APPOINTMENTS OF UNITED STATES MINERAL SURVEYORS—MINERAL SURVEYS

Department of the Interior,
General Land Office,
Washington, November 13, 1925.

To the Surveying Service of the General Land Office:

For administrative purposes, each local or branch office under the jurisdiction of the supervisor of surveys—former office of the surveyor general—will be designated " public survey office " at the place in which the office is located.

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[9] See Circulars Nos. 996, p. 1474, 1023, p. 140, and 1114, p. 1390.

[10] See Circular No. 39, p. 1442.

The returns of all classes of surveys executed by the surveying service of the General Land Office will be prepared for the approval and certification of the supervisor of surveys at Denver, Colo. All classes of surveys executed by other agencies, such as mineral surveys, forest homestead entry surveys, and all records prepared from the files of the public survey offices which are not the direct result of field operations but require certification, such as supplemental plats, segregation diagrams of mineral surveys, certified copies of records, etc., will be approved or certified to as the case may be by the office cadastral engineer. This procedure will relieve the supervisor of surveys at Denver and the district cadastral engineers from attention to matters which are handled by the public survey office from the beginning and to which the office cadastral engineer is competent to certify.

PROCEDURE RELATIVE TO MINERAL SURVEYS

Application for appointment as United States mineral surveyor should be addressed to the public survey office in the district for which appointment is desired. Here a through examination will be made of the applicant's technical qualifications to fill the position, and if passed in a satisfactory manner, the application will be forwarded to the division inspector for report as to the applicant's general reputation and fitness. Upon receipt of favorable report, recommendation for appointment will be made to the supervisor of surveys, who will issue the appointment through the public survey office and the applicant will be called upon to file the customary bond. The bond, if executed in proper form, will be forwarded to the supervisor of surveys for approval, together with the report of the division inspector, and these papers passed on to this office for acceptance of the bond. Notice of acceptance will be mailed to the public survey office, with copy to the supervisor of surveys, and the surveyor advised at once by the public survey office. Adverse report, as heretofore, will be sent direct to this office by the division inspector, but with notice at the same time to the public survey office.

In the matter of reappointments, notification should be given the surveyor 60 days prior to the expiration of his bond, with request that he signify his intentions regarding its renewal. If answered in the affirmative, the division inspector will be called upon for the customary report. Favorable report will be followed by notice to file renewal bond, the approval and acceptance of which will follow the regular procedure for original bonds.

With proper notation retained in each public survey office, the biennial report as to sufficiency of sureties and calls for renewal of expiring bonds can be made by the office cadastral engineer. In case of failure to file renewal bond, resignation, or death, the name of the deputy should be dropped from the list in any district, and this office notified of the action through the office of the supervisor of surveys.

Application for the survey of a mining claim, accompanied by the necessary certified copy of location certificate and requisite deposit, should be made to the public survey office for the district in which the claim is located. The office cadastral engineer will receipt for the deposit, issue the order for survey, if appropriate, administer all work in connection therewith, approving plat and field notes of such survey, and otherwise perform the duties prescribed by mining regulations to be performed by the former surveyor general, including certification as to expenditure made upon the claim.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved November 13, 1925.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 630]

CIRCULAR No. 1102

REGULATIONS GOVERNING SURVEY OF UNSURVEYED LANDS APPLIED FOR UNDER THE PROVISIONS OF THE ACT OF FEBRUARY 25, 1920 (41 STAT. 437), RELATING TO THE LEASING OF LANDS CONTAINING VALUABLE DEPOSITS OF PHOSPHATES, OIL OR GAS, OIL SHALE OR SODIUM

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 18, 1926.

United States Supervisor of Surveys, Registers, United States Land Offices.

GENTLEMEN: Under the provisions of section 10 of the act of February 25, 1920 (41 Stat. 440), relating to the leasing of public lands containing deposits of phosphates, of section 14 of said act relating to the leasing of lands embraced in any prospecting permit therefor upon which valuable deposits of oil or gas have been discovered, of section 21 of said act relating to the leasing of lands containing deposits of oil shale or land adjacent thereto, and of section 24 of said act relating to the leasing of lands embraced in any prospecting permit therefor upon which valuable deposits of sodium have been discovered, it is provided that in case the lands in question are unsurveyed, they shall be surveyed by the Government at the expense of the applicant for lease, in accordance with rules and regulations prescribed by the Secretary of the Interior.

In order that uniform procedure may be established in case of application for lease of unsurveyed lands under the provisions of any of the above-enumerated sections of said act the following regulations will be observed:

When the application for lease shall have received favorable consideration by the department, the applicant will be required to file with the district cadastral engineer of the public survey office of the State or district in which the lands are situated an application for an estimate of the cost of surveying the sections in which the claim will probably be located and upon receipt of such estimate, the applicant will be required to deposit with such cadastral engineer the estimated cost of surveying such sections, the deposit to be held as a trust fund. Upon receipt of such deposit, the district cadastral engineer shall prepare and submit to the General Land Office for approval special instructions providing for the subdivision of the township in its entirety in which the claim is located, the expense of the field work to be paid from the regular appropriation for surveying the public lands.

When the survey is accepted and the plat filed in the local land office, the claim will be adjusted to the resulting subdivisions as shown upon said plat. The cost of surveying the particular lands included within the claim thus adjusted will be ascertained by prorating the total cost of surveying the township to the area thereof. The amount thus ascertained will be deducted from the claimant's deposit and credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his legal representative.

Very respectfully,

Thos. C. Havell, *Acting Commissioner.*

Approved November 18, 1926.

E. C. Finney,
First Assistant Secretary.

SWAMP LANDS

UNITED STATES SWAMP LAND REGULATIONS

Department of the Interior,
General Land Office,
Washington, D. C., March 17, 1896.

As soon as practicable after the passage of the swamp land grant of September 28, 1850, viz, on the 21st of November, 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:

1. The field notes of Government survey could be taken as the basis for selections, and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.
2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.

The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.

The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Mississippi, Missouri, and Ohio. Later Oregon adopted this method.

The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i. e., to the field notes of survey, as a basis of settlement, in recent years.

The authorities of California did not adopt either method, and the passage of the act of July 23, 1866, rendered such action on their part unnecessary.

In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in accordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State.

All lands properly selected and reported to this office as swamp are placed of record in books especially prepared for that purpose. Thereafter the selections are compared with the other records of the office, and lists of such lands as are shown to be swamp or overflowed, within the meaning of the act, and that are otherwise free from conflict are made out by this office and submitted to the Secretary of the Interior with the recommendation that the same be approved.

When the lists have been approved by the Secretary and returned to this office duplicate copies of the same are made out, one of which is transmitted to the governor of the State, with the statement that on receipt of his request patent will issue to the State for the lands. The other list is transmitted to the register and receiver of the land office in which the lands are situated, and they are requested to examine the same with the records of their office and report any conflicts found.

Upon receipt of reply to the letters of this office as above, patents issue to the State for all the lands embraced in said lists so far as they are free from conflict.

Under the provisions of the act of March 2, 1849, granting swamp lands to the State of Louisiana, a certified copy of the list approved by the Secretary of the Interior, transmitted to the governor, has the force and effect of a patent.

The "list" referred to in section 2 of the act of September 28, 1850, is held to be the copy of the list approved by the Secretary of the Interior sent to the governor, upon which his request for patent is based.

The following are the swamp land regulations and decisions:

* * * * * * *

The grant of swamp lands, under acts of March 2, 1849, and September 28, 1850, is a grant in presenti. See United States Supreme Court decisions Railroad Co. *v.* Fremont County (9. Wall. 89); Railroad Co. *v.* Smith (id. 95); Martin *v.* Marks (7 Otto 345); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L. L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L. L. 564).

The act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary Interior, August 17, 1858; Commissioner General Land Office, May 2, 1871 (Copp's L. L. 474), affirmed by Secretary June 1, 1871, and Commissioner General Land Office, January 19, 1874 (Copp's L. L. 473), affirmed by Secretary July 9, 1875.

A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. See Secretary's decisions, October 4, 1855 (1 Lester's L. L. 553), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L. O. 149), and September 19, 1879.

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The claim of the State for indemnity for swamp lands sold or located subsequent to September 28, 1850, and prior to March 3, 1857, is not barred by failure of said States to have selected the lands prior to March 3, 1857. See Attorney General's opinion of April 20, 1866 (2 Lester, p. 382), adopted by the department April 23, 1866.

Under provisions of act of Congress approved March 2, 1855, as extended by act of March 3, 1857, indemnity proof must be taken by the State before an agent from the General Land Office, after the land for which indemnity is claimed shall have first been examined in the field by said agent. See Secretary's decision June 6, 1878 (5 Copp's L. O. p. 125).

Rules and regulations adopted by the General Land Office, with the approval of the Secretary of the Interior, in regard to the proof required in claims for indemnity, under the act of March 2, 1855, extended by the act of March 3 1857 (sections 2482, 2483, and 2484, Revised Statutes of the United States), for "swamp and overflowed lands" sold by the United States prior to March 3, 1857

Department of the Interior,
General Land Office,
Washington, D. C., August 12, 1878.

In order to dispose of the claims for indemnity provided for by the act of Congress approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," which act was extended by the act of March 3, 1857 (as revised, now secs. 2482, 2483, and 2484 of the Revised Statutes of the United States), the following rules and regulations in regard to the "due proof" to be made to the Commissioner of the General Land Office, under the second section of said first-mentioned act (as revised, now sec. 2482, Revised Statutes of the United States), in order to obtain the indemnity aforesaid, are adopted:

The governor, or other duly authorized officer or agent, of the State claiming indemnity will be required to furnish this office with a list of the lands for which indemnity is claimed. As soon as practicable after the receipt of this list an agent will be appointed to make an examination in the field of each of the tracts therein described, and secure such reliable information as to the character thereof as can be obtained from personal examination and observation, and by inquiry of the owner or resident thereon, if any there be, and of persons residing in the vicinity having personal knowledge of the past and present character of the land. Upon the completion of this examination at least 30 days' notice will be given the State, or claimants under the State, of the time and place when and where testimony will be received touching the character of the lands described in the list filed in this office.

At the times and places thus fixed the agent of this office will attend for the purpose of examining witnesses and adopting such other measures as may be necessary to protect the interests of the Government.

The evidence offered by the State, or its agent, as to the character of the land, must be the testimony of at least two respectable and disinterested persons who have personal and exact knowledge of the condition of the land during a series of years extending to the date of the swamp grant (September 28, 1850).

Where the testimony of witnesses having a knowledge of the condition of the land at the date of the grant can not be obtained, the evidence of at least two respectable and disinterested persons, who have a knowledge of the land during a series of years extending as near to the date of the grant as possible, may be presented; but before presenting this secondary evidence the State agent should file his own affidavit setting forth fully and satisfactorily the reasons for the failure to present the testimony of the first-mentioned class of witnesses, and also setting forth that the witnesses whose testimony he offers have the best knowledge of the land extending nearest to September 28, 1850, of any that can be obtained.

The testimony of each witness should not only show that at the time when he first knew the land the greater part of each 40-acre tract, or other smallest legal subdivision, was swamp or overflowed within the meaning of the grant, but it must be full and explicit on the following points:

The cause of the swampy character or overflow, with the time of the year and the length of time such was the condition of the land, and how much or what proportion of the tract was thus rendered unfit for cultivation in its natural condition.

The nature and extent of the means necessary to reclaim the land.

The kinds of timber, plants, shrubs, grasses, etc., growing on the land, and whether or not plowing and the removal of timber or other natural growth would not have caused the land to become dry enough for cultivation without ditching, draining, or protection from overflow.

The names of water courses, lakes, etc., on or near the land, with a description of the size of the same, and, where not on the tract, the direction and distance from it.

The general character of adjacent and surrounding lands.

The present condition of the land, and in case any changes have taken place within the knowledge of the witnesses the nature and cause of such changes, with a full description of such artificial means of reclamation as have had any effect on the character of the land, and all other facts known to the witnesses which may tend to show the true condition of the land.

The witnesses should be required to state facts, not opinions, and their testimony should be as full and complete as to every fact within their knowledge as if it were needed to establish the character of the land to the satisfaction of a judge or jury.

Ex parte affidavits will not be considered, and all testimony must be taken in the presence of the agent of this office.

Depositions may be taken before any officer authorized by law to administer oaths; provided that if taken before an officer other than the clerk of a court of record having a seal, the official character of such officer shall be established by the certificate of the clerk of the proper court of record under the official seal thereof.

In all cases the disinterestedness of the witnesses must be established under oath, and the credibility of the witnesses must be certified to by the officer taking the depositions, or established by the oath of witnesses to whose credibility he certifies.

In cases where the agent of this office shall be satisfied, from the previous examination in the field, that any tract or tracts are of the character contemplated by the swamp grant, the testimony of two witnesses, as above mentioned, will be deemed sufficient proof; but in cases where said agent shall not be so satisfied from the previous examination in the field, he will take measures to secure such additional evidence as may be necessary to fully determine the character of the land, by obtaining the testimony of the owner or occupant of the land, or, if those persons have testified, other well-informed persons residing in the vicinity of the land, allowing the agent of the State full opportunity to cross-examine such witnesses should he desire to do so.

If the agent of this office shall be in doubt as to the amount of a particular tract which is swampy or overflowed, he will have a survey and plat made of the tract by a competent surveyor, in order that the exact amount of swampy or overflowed land in the tract may be shown.

After the testimony is taken the agent will make a full report to this office upon each of the tracts upon which testimony is taken, together with his opinion as to the real character of each of said tracts.

These regulations will supersede all former regulations; but cases where proof has heretofore been taken and filed in this office will be examined and determined upon such proof, if it is found to be in strict accordance with the regulations existing at the time of taking the same.

J. A. WILLIAMSON, *Commissioner.*

DEPARTMENT OF THE INTERIOR, *August 20, 1878.*
Approved.

A. BELL, *Acting Secretary.*

In States where the field notes of survey govern in adjusting claims for land under the act of 1850, said notes are the basis for adjusting claims for indemnity. (Secretary's decision of April 17, 1880.)

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The grant of swamp lands to the States of Oregon and Minnesota was a grant in presenti, and the land so granted can not be otherwise disposed of by the Government. See Secretary's decisions, April 15, 1880; Crowley *v.* State of Oregon (7 Copp's L. O. 28), and the State of Oregon *v.* United States, June 4, 1880 (id. 53).

Status of lands within the meander lines of shallow bodies of water at date of survey that might have been temporarily overflowed considered. See Secretary's decision, December 2, 1874 (Copp's Land Laws 475).

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Circular in relation to proof required to obtain relief for actual settlers upon rejected swamp lands in the State of Missouri

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 23, 1875.

Registers and Receivers of United States land offices in the State of Missouri.

GENTLEMEN: Annexed is an act of Congress approved February 23, 1875, "for the relief of actual settlers on lands claimed to be swamp and overflowed lands in the State of Missouri."

In order to enable persons entitled thereto to avail themselves of the provisions of this act the following regulations are prescribed, with the approval of the Secretary of the Interior.

In addition to compliance with existing regulations governing entries under the preemption and homestead laws, claimants must establish the following facts:

First. That the land was duly selected as swamp land and withheld from market in consequence of such selection.

Second. Purchase in good faith from the State or county, with settlement upon and improvement of the land to the value of $100.

Third. That the purchaser from the State or county, or his heirs, assigns, or legal representatives, has continued to reside thereon.

Fourth. That the claim of the State under the swamp-land grant has been rejected for the reason that the land was not in fact swamp or overflowed.

All preemption settlements and homestead entries made prior to February 23, 1875, where the requirements of law have been fully complied with, will take precedence of claims presented under this act.

S. S. BURDETT, *Commissioner.*

Approved.

C. DELANO, *Secretary.*

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Entries and filings of selected swamp lands

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 13, 1886.

Registers and Receivers, United States Land Offices.

GENTLEMEN: The rules heretofore in force relative to the admission of entries and filings on lands selected (and prior to their approval and certification by the Secretary of the Interior) as "swamp and overflowed and rendered thereby unfit for cultivation," are hereby modified as follows:

1. When any settler upon such lands or applicant to enter the same under the public-land laws of the United States shall apply to make a filing or entry under said laws, accompanied by a statement under oath corroborated by two witnesses, that the land in its natural state is not swamp and overflowed and rendered thereby unfit for cultivation, the register and receiver will allow such filing or entry "subject to the swamp land claim."

2. Upon the admission of any such filing or entry the register will at once notify the governor of the State thereof, and allow him 60 days within which to object to the perfection of the entry and to apply for a hearing in behalf of the State to prove the swampy character of the land.

3. When a hearing is ordered between the State and claimant under the public-land laws, the burden of proof will be upon the State to establish the character of the land.

4. When no protest or application for a hearing is presented on the part of the State, as herein provided, the State will be deemed concluded from thereafter asserting a claim to the land under the swamp-land grant.

5. The foregoing applies only to those States whose claims are adjusted by examinations in the field.

6. Where swamp land selections are based upon the field notes of survey, and the land is alleged not to have been in fact swamp and overflowed, and rendered thereby unfit for cultivation at the date of the swamp-land grant, the burden of proof will be upon the contestant or adverse claimant under the public-land laws.

7. You will promptly advise this office when notice is given the governor in any case, stating the date of such notice, and the description of the land involved. You will also duly report the governor's action in each case.

WM. A. J. SPARKS, *Commissioner.*

Approved.

L. Q. C. LAMAR, *Secretary.*

[From 13 L. D. 301]

Rules and regulations adopted by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior, relative to the presentation and adjustment of claims under the swamp land laws

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 19, 1891.

The numerous lists of swamp-land selections heretofore presented to this office as claims for lands in place and for cash and land indemnity under the acts of March 2, 1849, September 28, 1850, and March 12, 1860, relating to swamp lands in place, and the acts of March 2, 1855, and March 3, 1857, relating to cash and land indemnity in lieu of swamp lands sold and located with warrants and scrip, and the continued presentation of numerous selection lists in which additional claims for large quantities of land situated in the same townships or counties as were the previous selections, and the necessity for putting a term to the work of examining such selected lands in the field by special agents and of repeatedly adjusting claims in this office, have suggested the following rules and regulations for the closing and adjustment of all claims under the swamp land laws:

1. Preference in the order of consideration will be given to the adjustment of conflicts between homestead, preemption, and cash entries and warrant locations and the swamp-land claims of the States over other claims arising under the same laws.

2. Claims for swamp lands in place will be taken up for consideration in preference to cash or other indemnity claims.

3. Cash-indemnity claims will be adjusted in the third order, i. e., after cases of conflict and claims for lands in place.

4. Land-indemnity claims will not be adjusted when there are no public lands with which to satisfy such claims in the States in which the warrants or the scrip were located.

5. The surveyors general when constructing and approving segregation maps and surveys or approving selection lists of swamp and overflowed lands must, in their certificates, find and recite, affirmatively, facts showing that the principal conditions required by the swamp land act to establish the character of the lands, as swamp and overflowed, existed at the date of the passage of the granting act. All evidence taken by surveyors general to establish the character of the land must be transmitted with the maps or lists approved. This office will not approve maps or accept lists in which it does not affirmatively appear in the surveyor general's certificate that the lands reported as swamp and overflowed were in reality of that character at the date of the grant.

6. Before final action is taken on the claim of a State for swamp lands in place, or cash or land indemnity, a certificate should be required of a duly authorized agent of the State reciting that the lands selected in each and every township involved in the selection list constituting the claim represents the full and final claim of the State to lands under the swamp land acts in the said townships, and that the State waives all claims or rights, under the said acts, if it have any, to all other lands not selected in the said townships. Such a certificate will be accepted as evidence that the claim of the State to swamp lands in the particular townships to which it applies is final and complete; and it will be recorded in a book kept for that purpose, and as far as practicable all such completed claims will be acted upon as promptly as possible and in the order of their completion.

7. In the case of cash and land-indemnity claims now pending or which may hereafter be presented for the benefit of counties a certificate of a duly authorized agent of the county, of the character and effect of that provided for in the sixth section of these instructions relating to claims of States, will be required of county agents, covering the entire area of the county.

8. Waivers must be unconditional, and a copy of the authority from the State legislature or from the county authorities to act for the State or the county and to make certificates of waiver must be filed in this office by the State and county agents.

THOS. H. CARTER, *Commissioner*.

Approved.

JOHN W. NOBLE, *Secretary*.

(Laws and lists of decisions omitted.)

SWAMP LANDS—PROCEDURE IN CERTAIN CASES UPON FILING OF PLATS OF SURVEY

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 23, 1929.

Chiefs of Divisions, General Land Office.

SIRS: Under a decision of the department dated January 2, 1929, under G. L. O. serial 01721 and a letter of the same date relating thereto, certain holdings were made and directions given as to action to be taken where supplemental plats of survey of erroneously meandered areas are accepted and filed and the field notes show the land to be swamp in character as contemplated by the act of September 28, 1850 (9 Stat. 519), and in cases where the field notes show the land to be nonswamp in character.

The decision and letter of instructions are definite, but it is thought advisable to indicate the procedure to be followed in this office.

Upon the acceptance of a plat of survey of erroneously meandered areas or of any other areas regularly surveyed in the State of Wisconsin where the field notes indicate the land to be swamp, Division E will advise both Division C and Division F thereof. Division F will then immediately determine from the field notes whether the lands passed to the State under the swamp act, and if so will immediately notify Division C in order that the notice prepared for the filing of the plat may contain a statement to the effect "that the field notes indicate the land to be swamp within the meaning of the act of September 28, 1850." Division C will withhold action looking toward the filing of the plat until it has such notice from Division F.

At the expiration of a period of 91 days from the filing of the plat within which any adverse claims may be filed, and if none be filed within that time, a list of the swamp lands should be prepared and submitted to the department for approval as stated in the decision and letter referred to. All applications filed in conflict with the State's rights should be rejected by this office subject to the right of appeal, unless accompanied by a prima facie showing of nonswamp character of the land, in which case action will follow the usual procedure.

In cases where the field notes of survey do not indicate the land to be swamp, applications therefor will be acted upon without the necessity of notifying the State thereof, such action being based upon the merits of the applications themselves and without regard to possible State claim, in the absence of a specific protest by the State.

As stated in the departmental decision, the showing made by the field notes as to the swamp or nonswamp character of the land may be overcome by proof by the State or other applicants.

It is thought that "any recently surveyed areas" as stated by the Secretary may well include only those made since 1925, when the offices of the surveyors general were abolished, leaving any tracts theretofore surveyed to be taken up for adjudication as occasion may arise.

Since the States of Alabama, Indiana, Louisiana, Michigan, Minnesota, Mississippi, and Ohio make the field notes of survey the basis for determining what lands passed to them under the swamp grant, the foregoing instructions will apply to those States as well.

The same procedure will be followed in cases arising in the State of California, attention being called to section 4 of the act of July 23, 1866 (14 Stat. 218).

Very respectfully,

THOS. C. HAVELL,
Acting Commissioner.

TIMBER AND STONE ENTRIES

[Reported, 51 L. D. 365]

Circular No. 851

REGULATIONS UNDER TIMBER AND STONE LAW

Department of the Interior,
General Land Office,
Washington, D. C., February 25, 1926.

Registers, United States Land Offices.

Sirs: The regulations under the act of June 3, 1878 (20 Stat. 89), and amendatory acts, commonly known as the timber and stone law, which were revised September 20, 1922 (49 L. D. 288), are hereby revised and modified, as follows:

PROVISION FOR APPRAISEMENT

1. Any land subject to sale under the foregoing acts may under the direction of the Commissioner of the General Land Office, upon application or otherwise, be appraised by smallest legal subdivisions, at their reasonable value, but at not less than $2.50 per acre, and hereafter no sales shall be made under said acts except as provided in these regulations.

CHARACTER OF LANDS SUBJECT TO ENTRY

2. All unreserved, unappropriated, nonmineral, surveyed public lands within the public-land States, which are valuable chiefly for the timber or stone thereon and unfit for cultivation at the date of sale, may be sold under this act at their appraised value, but in no case at less than $2.50 per acre, in contiguous legal subdivisions upon which there is no existing mining claim or the improvements of any bona fide settler claiming under the public land laws. The act specifically prohibits the making of entries thereunder for land containing valuable deposits of gold, silver, cinnabar, copper, or coal, but entries thereunder may be allowed under the act of July 17, 1914 (38 Stat. 509), for land withdrawn or classified as valuable for phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits, provided the applicant files his consent, witnessed by two persons or acknowledged before an officer having an official seal, to have the entry stand subject to the provisions and limitations of said act.

All applications for timber and stone entries for lands which are also embraced in applications for oil and gas prospecting permits or permits granted or in applications for phosphate, sodium, oil shale, or potash permits or leases or in permits or leases granted, if accompanied by the required consent under the act of July 17, 1914, and a satisfactory waiver of claim to compensation, should be received, noted upon the records and the applicant for prospecting permit or the permittee or lessee as the case may be should be advised that he will be allowed 30 days from receipt of notice within which to show why the nonmineral application should not be allowed subject to the reservation to the United States of the minerals sought to be acquired by the mineral claimant and with a waiver of claim to compensation in accordance with section 29 of the act of February 25, 1920 (41 Stat. 437), except in cases of applications for potash permits or leases or permits or leases granted, in which case the waiver should be in accordance with section 6 of the act of October 2, 1917 (40 Stat. 297); which showing must bear evidence of service of notice on the nonmineral applicant hereunder. You will reject all applications for lands in areas which have been designated by the department as within the geological structure of producing oil or gas fields, or within a naval petroleum reservation or within oil or gas leases, and otherwise proceed in accordance with the instructions in Circular No. 1021. (51 L. D. 167.)

The terms used in the first paragraph of this section (2) may be defined substantially as follows for the purpose of construing and applying this law:

(*a*) *Unreserved and unappropriated lands* are lands which are not included within any military, Indian, or other reservation, or in a national forest, or in a withdrawal by the Government for reclamation or other purposes, or which are not covered or embraced in any entry, location, selection, or filing which withdraws them from the public domain.

(*b*) *Unoccupied lands* are lands belonging to the United States upon which there are no improvements belonging to any person who has initiated and is properly maintaining a valid mining or other claim to such lands under the public land laws. Abandoned and unused mines, shafts, tunnels, or buildings occupied by mere trespassers not seeking title under any law of the United States do not prevent timber and stone entries if the land is otherwise capable of being so entered.

(*c*) *Nonmineral lands* are such lands as are not known to contain any substance recognized and classed by standard authorities as mineral, in such quantities and of such qualities as would, with reasonable prospects of success in developing a paying mine thereon, induce a person of ordinary prudence to expend the time and money necessary to such development.

(*d*) *Timber* is defined as trees of such kind and quantity, regardless of size, as may be used in constructing buildings, irrigation works, railroads, telegraph and telephone lines, tramways, canals, or fences, or in timbering shafts and tunnels or in manufacturing, but does not include trees suitable for fuel only.

(*e*) *Lands valuable chiefly for timber*, but unfit for cultivation, are lands which are more valuable for timber than they are for cultivation in the condition in which they exist at the date of the application to purchase, and therefore include lands which could be made more valuable for cultivation by cutting and clearing them of timber. The relative values for timber or cultivation must be determined from conditions of the land existing at the date of the application to purchase.

3. Lands may be entered under the timber and stone acts, except as denied by special laws, in all of the public-land States; but such entries may not be made in Alaska.

BY WHOM ENTRIES MAY BE MADE

4. One timber and stone entry may be made for not more than 160 acres (*a*) by any person who is a citizen of the United States, or who has declared his intention to become such a citizen, if he is not under 21 years of age, and has not already exhausted his right by reason of a former application for an entry of that kind, or has not already acquired title to or is not claiming under the homestead or desert land laws through settlement or entry made since August 30, 1890, any other lands which, with the land he applies for, would aggregate more than 320 acres; or (*b*) by an association of such persons; or (*c*) by a corporation, each of whose stockholders is so qualified.

5. A married woman may make entry if the laws of the State in which she applies permit married women to purchase and hold for themselves real estate, but she must make the entry for her own benefit and not in the interest of her husband or any other person.

METHOD OF OBTAINING TITLE

6. Any qualified person may obtain title under the timber and stone law by performing the following acts: (*a*) Personally examining the land desired; (*b*) presenting an application and sworn statement, accompanied by a filing fee of $10; (*c*) depositing with the register the appraised price of the land; (*d*) publishing notice of his application and proof; (*e*) making final proof.

7. Examination of the land must be made by the applicant in person not more than 30 days before the date of his application, in order that he may knowingly swear to its character and condition.

APPLICATION AND SWORN STATEMENT: DEPOSIT

8. The application and sworn statement (Form 4–522) must contain the applicant's estimate of the timber, based on examination, and his valuation of the land and the timber thereon, by separate items. It must be executed in duplicate, after having been read to or by the applicant, in the presence of the officer administering the oath, and sworn to by him before such officer, and may be either the register of the land district in which the land is located, a United States commissioner, a judge or a clerk of a court of record in the county or parish or land district in which the land is situated, or before any officer of the classes named who resides nearest or most accessible to the land, although he may reside outside the county and land district in which the land is situated. If the application is executed before a qualified officer within the boundaries of either the county or land district in which the land is located, no additional

showing as to nearness or accessibility of such officer need be made, but if executed outside of both the county and land district the applicant must show by affidavit satisfactory to the Commissioner of the General Land Office that the officer before whom the application was executed was, because of topographic or geographic conditions, nearer or more accessible to the land. An application is not acceptable if executed more than 10 days before its deposit in the mails for filing in the local land office. Each applicant must, at the time he presents his application and sworn statement, deposit with the register a filing fee of $10.

As there is no local land office in the States of Kansas, Illinois, Indiana, Iowa, Michigan, Mississippi, Missouri, Ohio, and Wisconsin, the application and sworn statement covering land in any of those States must be mailed directly to this office within the specified time.

9. Applications by associations or corporations must, in addition to the facts recited in the foregoing statement, show that each person forming the association or holding stock in the corporation is qualified to make entry in his own right and that he is not a member of any other association or a stockholder in any other corporation which has filed an application or sworn statement for other lands under the timber and stone laws.

DISPOSITION OF APPLICATION

10. After application and deposit have been filed in proper form, as required by these regulations, the register will at once forward one copy of the application to the division inspector having jurisdiction of the land described, who, if he finds legal objection to the allowance of the application, will return it to him with report thereon. The register will, if he concurs in an adverse recommendation of the division inspector, dismiss or deny the application, subject to the applicant's right of appeal; but if he disagrees with the recommendation he will forward the record to the Commissioner of the General Land Office, with his report and opinion thereon, for such action as the commissioner may deem advisable.

If the division inspector finds no such legal objection to the application, he shall cause the lands applied for to be appraised by an officer or employee of the Government, using Form 4–526.

APPRAISEMENT: METHOD

11. The officer or employee designated to make the appraisement must personally visit the lands to be appraised and thoroughly examine every legal subdivision thereof, and the timber thereon, and appraise separately the several kinds of timber at their stumpage value, and the land independent of the timber at its value at the time of appraisement, but the total appraisement of both land and timber must not be less than $2.50 per acre. He must, in making his report, consider the quantity, quality, accessibility, and any other elements of the value of the land and the timber thereon. The appraisement must be made by smallest legal subdivisions, or the report must show that the valuation of the land and the estimate of the timber apply to each and every subdivision appraised.

APPRAISEMENT: MANNER OF RETURN: APPROVAL

12. The completed appraisement must be mailed or delivered personally to the division inspector under whose supervision it was made, and not to the applicant. Each appraisement upon which an entry is to be allowed must be approved, respectively or conjointly, as provided in these regulations, by the division inspector under whose supervision it was made, by the register who allows the entry, or by the Commissioner of the General Land Office.

APPRAISEMENT: DISAGREEMENT BETWEEN APPRAISING AND APPROVING OFFICERS: HOW DETERMINED

13. The division inspector will return to the appraiser, with his objections, an appraisement which he deems materially low or high, and the appraiser shall within 20 days from the receipt thereof resubmit the papers, with such modifications or explanations as he may deem advisable or proper, upon receipt of which the division inspector will either approve the schedule as then submitted or forward the papers to the register with his memorandum of objection. The register will thereupon consider the case. If he approves the appraisement he will sign the certificate appended thereto and advise the division inspector thereof. If the register approves the objection of the division inspector he will so indicate, and if the appraising officer is an employee of the Interior Department, under the supervision of the division inspector, he will return the papers to the division inspector, who will thereupon order a new appraisement by a different officer. If, however, the register approves the objection of the division inspector when the appraiser is an officer of another bureau of this department or of another department, he will forward the record of the case to the Commissioner of the General Land Office, who will then determine the controversy.

APPRAISEMENT: NOTATION AND EFFECT THEREOF

14. When the appraisement is completed the register will note the price on his records, and for one year after the date of the appraisal the land may be sold at such price. After the lapse of one year an application under the act will be referred to the division inspector for report and recommendation as to whether the conditions then existing demand a new appraisal.

NOTICE OF APPRAISEMENT: PAYMENT OR PROTEST

15. If the appraisement shows the land, or any subdivision thereof, to be subject to entry, the register will note its appraised price on his records, and will immediately inform the applicant (using Form 4–524) that he must, within 30 days from service of notice, deposit with the register, either in lawful money, in post-office money orders payable to the register, in certified checks drawn in favor of the register which can be cashed without cost to the Government, or as provided in paragraph 34 hereof, the appraised price of the land, or of said part, and timber thereon, or within said time file his pro-

test against the appraisement, depositing with the register a sum sufficient to defray the expenses of a reappraisement (which sum, not less than $100, must be fixed by the register and specified in the notice to the applicant), together with his application for reappraisement at his own expense.

16. If the register rejects the application as to part or all of the land, upon the ground that the appraisement shows it not to be subject to timber and stone entry, applicant may within 30 days submit a showing by affidavit, corroborated by at least two witnesses having actual knowledge of the character of the land, setting forth facts which tend to disprove the appraisement and that it is chiefly valuable for the timber and stone thereon, and if a prima facie showing is made, thereupon a hearing shall be ordered to determine the facts, after a date has been fixed for the same by agreement between the division inspector and the register. Notice must be given by registered letter and the envelope should be marked for return if not delivered within 30 days. If notice be returned after being held in the post office for 30 days, such proceedings will constitute constructive notice for 30 days. After 30 days' notice has been had, if no deposit of the price has been made or protest against the appraisement has been filed, as to lands found subject to entry, and no application for hearing or appeal has been filed as to lands found not subject to entry, the register shall close the case on his records, all rights under the application being terminated without notice.

OBJECTION TO APPRAISEMENT: APPLICATION FOR REAPPRAISEMENT

17. Any applicant filing his protest against an appraisement, and his application for reappraisement, must support it by his affidavit, corroborated by two competent, credible, and disinterested persons, in which he must set forth specifically his objections to the appraisement. He must indicate his consent that the amount deposited by him for the reappraisement, or such part thereof as is necessary, may be expended therefor, without any claim on his part for a refund or return of the money thus expended.

REAPPRAISEMENT

18. Upon the receipt of a protest against appraisement and application for reappraisement conforming to the regulations herein, the register will transmit such protest and application to the division inspector, who will cause the reappraisement to be made by some officer other than the one making the original appraisement. The procedure provided herein for appraisement will be followed for reappraisement, except the latter, if differing from the former, must, to give it effect, be approved both by the division inspector and the register, or, in case of disagreement between them, by the Commissioner of the General Land Office.

NOTICE OF APPRAISEMENT

19. When a reappraisement is finally effected, the register will note the reappraised price on his records and at once notify the

applicant (using Form 4–525) that he must, within 30 days from the date of notice, deposit with the register the amount fixed by such reappraisement for the sale of the land, or thereafter, and without notice, forfeit all rights under his application.

COST OF MAKING REAPPRAISEMENT

20. The officer or employee of the United States making the reappraisement shall be paid from the amount deposited with the register by the applicant therefor, the salary, per diem, and other expenses to which he would have been entitled from the Government, in the case of an original appraisement, for his services for the time he was engaged in making and returning the reappraisement. The register will, out of the money deposited by the applicant, pay such compensation including reasonable expenses for subsistence, transportation, and necessary assistants; and the officer will deduct from his expense account with the Government the amount which he has received from the register for such services. The register will return to the applicant the amount, if any, remaining on deposit with him after paying the expenses of said reappraisement.

FINAL PROOF

21. After the appraisement or reappraisement and deposit of purchase money and fee have been made the register will fix a time and place for the offering of final proof[1] and name the officer before whom it shall be offered and post a notice (Form 4–348e) thereof in the land office and deliver a copy of the notice (Form 4–348f) to the applicant, to be by him and at his expense published in the newspaper of accredited standing and general circulation published nearest the land applied for. This notice must be continuously published in the paper for 60 days prior to the date named therein as the day upon which final proof must be offered.

TIME, PLACE, AND METHOD OF MAKING FINAL PROOF

22. Final proof (using Form 4–370a) should be made at the time and place metioned in the notice, and, as a part thereof, evidence of publication, as required by the previous paragraph, should also be filed. If final proof is not made on that day or within 10 days thereafter, the applicant may lose his right to complete entry of the land. Upon satisfactory showing, however, explaining the cause of his failure to make the proof as above required, and in the absence of adverse claim, the Commissioner of the General Land Office may authorize him to readvertise and complete entry under his previous application.

23. If an applicant dies after the filing of an allowable application hereunder, his heirs will be permitted to make proof and payment, but patent will issue to the heirs of the applicant.

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[1] Similar action will be taken by the General Land Office on applications for land in those States having no local land office.

FINAL ENTRY

24. After an appraisement or reappraisement has been approved, the payments made, and satisfactory proof submitted in any case as required by these regulations, the register will, if no protest or contest is pending, allow a final entry.

GENERAL PROVISIONS

CONTESTS AND PROTESTS

25. Protest may be filed at any time before an entry is allowed, and contest may be filed at any time before patent issues, by any person who will furnish the register with a corroborated affidavit alleging facts sufficient to cause the cancellation of the entry, and will pay the cost of contest.

FALSE SWEARING—FORFEITURE

26. If an applicant swear falsely in his application or sworn statement, he will be liable to indictment and punishment for perjury; and if he be guilty of false swearing or attempted fraud in connection with his efforts to obtain title, his application and entry will be disallowed and all moneys paid by him will be forfeited to the Government, and his rights under the timber and stone acts will be exhausted.

EFFECT OF APPLICATION TO PURCHASE

27. The filing of an application hereunder, for land subject thereto, and to the completion of which the Government interposes no obstacle, exhausts the right of the applicant under the act.

28. After an application has been presented hereunder no other person will be permitted to file on the land embraced therein under any public-land law until such application shall have been finally disposed of adverse to the applicant.

29. Lands appraised or reappraised hereunder, but not sold, may, upon the final disallowance of the application, be entered by any qualified person, under the provisions of the timber and stone laws, at its appraised or reappraised value, if subject thereto.

30. Lands applied for but not appraised and not entered under these regulations may, when the rights of the applicant are finally terminated, be disposed of as though such application had not been filed.

31. Any lands which have not been reappraised may be reappraised upon the request of an applicant therefor under these regulations who complies with the requirements of section 17 hereof.

32. An applicant securing a reappraisement under these regulations shall acquire thereby no right or privilege except that of purchasing the lands at their reappraised value, if he is qualified, and if the lands are subject to sale under his application; and he must otherwise comply with these regulations, but shall not, in any event, be entitled to the return of any money deposited by him and expended in such reappraisement.

33. The Commissioner of the General Land Office may at any time direct the reappraisement of any tract or tracts of public lands, when, in his opinion, the conditions warrant such action.

34. Unsatisfied military bounty land warrants under any act of Congress and unsatisfied indemnity certificates of location under the act of Congress approved June 2, 1858, properly assigned to the applicant, shall be receivable as cash in payment or part payment for lands purchased hereunder at the rate of $1.25 per acre.

35. The forms mentioned herein shall be a part of these regulations.

ENTRY OF STONE LANDS

36. The foregoing regulations apply to entries of lands chiefly valuable for stone, and the forms herein prescribed can be modified in such manner as may be necessary to the making of entries of stone lands.

FORMER REGULATIONS REVOKED

37. All former regulations, decisions, and practices in conflict with these regulations are hereby revoked.

Very respectfully,

William Spry, *Commissioner.*

Approved.

E. C. Finney,
First Assistant Secretary.

(Acts omitted.)

33. The Commissioner of the General Land Office may at any time direct the reappraisement of any tract or tracts of public lands, when, in his opinion, the conditions warrant such action.

34. Unsatisfied military bounty land warrants under any act of Congress and unsatisfied indemnity certificates of location under the act of Congress approved June 2, 1858, properly assigned to the applicant, shall be receivable as cash in payment or part payment for lands purchased hereunder at the rate of $1.25 per acre.

35. The forms mentioned herein shall be a part of these regulations.

ENTRY OF STONE LANDS

36. The foregoing regulations apply to entries of lands chiefly valuable for stone, and the forms herein prescribed can be modified in such manner as may be necessary to the making of entries of stone lands.

FORMER REGULATIONS REVOKED

37. All former regulations, decisions, and practices in conflict with these regulations are hereby revoked.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved.

E. C. FINNEY,
First Assistant Secretary.

(Acts omitted.)

TIMBER CUTTING, SALE, AND USE

[Reported, 36 L. D. 73]

TIMBER CUTTING—PERMITS TO CUT TIMBER BY AGENT FROM NONMINERAL PUBLIC LANDS

INSTRUCTIONS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 21, 1907.

Chiefs of Field Divisions, General Land Office.

SIRS: Hereafter applications for permit to cut timber by agent from the nonmineral public lands under the act of March 3, 1891 (26 Stat. 1093), as extended by the act of February 13, 1893 (27 Stat. 444), and the act of March 3, 1901 (31 Stat. 1436), will be filed directly with you instead of with the register and receiver as heretofore. On receipt of such an application you will at once have the same taken up and made special for investigation as follows:

(1) Examine the records of the proper local land office to see if the lands described in the petition are vacant public lands.

(2) Ascertain by field examination or otherwise that the applicants are bona fide residents of the State and that they urgently need the amounts of timber set opposite their respective names for the purposes indicated in the act.

(*a*) That the petitioners are not in position to go upon the public domain and cut and get out said timber for themselves.

(*b*) That the agent who is to procure the timber for them is in every way reliable and that the price agreed upon is only a charge for the necessary time, labor, and legitimate expense in getting it out, plus a fair price per thousand feet for sawing logs into lumber, and that he does not make any charge for the timber itself.

(*c*) That the removal of the timber will not interfere with, lessen, or damage the water supply or injuriously affect any public interest and that said timber is for the actual use of the petitioners and is not to be sold nor bartered; also give county and State where timber is to be used.

(*d*) That the land is nonmineral in character.

(*e*) Whether or not there are private dealers who will supply timber or lumber to the petitioners; and if so, at what rate.

(*f*) If after your investigation is completed you find that the petitioners, or any of them, are entitled to the free use of timber under the terms of law, you will grant said petition with the amounts of timber required, placing your initials after the name of each petitioner whose permit is granted. You will not initial the names of any petitioners who, in your opinion, are not entitled to the use of timber and in your report you will state the reasons for rejecting the petition as to them.

Very respectfully,

FRED DENNETT,
Acting Commissioner.

Approved August 21, 1907.

G. W. WOODRUFF,
Acting Secretary.

[Reported, 42 L. D. 30]

CIRCULAR No. 222

RULES AND REGULATIONS GOVERNING THE FREE USE OF TIMBER UPON VACANT MINERAL PUBLIC LANDS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 25, 1913.

To settlers and residents of Colorado, Nevada, New Mexico, Arizona, Utah, Wyoming, North Dakota, South Dakota, Idaho, and Montana, and the chiefs of field divisions and special agents of the General Land Office:

By the act of June 3, 1878, chapter 150 (20 Stat. 88), it is provided:

> That all citizens of the United States and other persons, bona fide residents of the State of Colorado or Nevada, or either of the Territories of New Mexico, Arizona, Utah, Wyoming, Dakota, Idaho, or Montana, and all other mineral districts of the United States, shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in either of said States, Territories, or districts of which such citizens or persons may be at the time bona fide citizens, subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes: *Provided*, The provisions of this act shall not extend to railroad corporations.

The act of June 3, 1878, supra, expressly declares that the Secretary of the Interior may prescribe rules and regulations for the protection of the timber upon the land of the character referred to in the act and an implied power is, therefore, conferred upon him to designate the sections or tracts of land where timber may be cut.

The following instructions shall govern with reference to timber cutting on vacant mineral public lands in the States named above.

1. Qualified persons, that is, bona fide residents of the States above named, may cut and remove timber free of charge from unoccupied, unreserved, mineral public lands within said States strictly for their own use for building, agricultural, mining, or other domestic purposes, but not for sale or disposal, nor for use by other persons, nor for export from the State in which the timber is situated and where the cutting or removal of timber or lumber does not exceed in stumpage value the amount of $50 in any one continuous period of

12 months, the person desiring to cut and remove the timber may do so without making any previous application therefor: *Provided, however*, That he shall first notify the proper chief of field division by registered letter, in which he shall set forth the kind and quantity of timber which he intends to cut, and the use for which cut; and he shall also describe the land on which said cutting is to be done by township and range and by section and sectional subdivision thereof, if it be surveyed, or by natural objects sufficient to identify the land if it be unsurveyed.

2. Where a greater quantity of timber than that specified in the preceding paragraph is desired by any one person, or, where an agent, appointed for such purpose by one or a number of persons, desires to cut or remove more than $50 worth of timber in any one continuous period of 12 months, application must first be made to the Commissioner of the General Land Office for the purpose of determining whether or not the cutting of the timber should be confined to any particular sections or tracts of land, and further for the purpose of according the Commissioner of the General Land Office in the event he should so desire an opportunity of directing how the tops and other refuse may be disposed of for the protection of the timber remaining and the prevention of forest fires. This regulation must be observed in every case wherein the amount of timber to be cut in any one continuous period of 12 months exceeds $50 in stumpage value, whether the person doing the cutting is acting for himself or as an agent for another or others. Whether or not an application must be filed is to be determined by the fact as to whether or not the aggregate amount of timber to be cut in any one continuous period of 12 months, together with all amounts previously cut by or for the said person or persons during the same period exceeds $50 in stumpage value. This rule shall be applicable where the agent cuts for a number of persons under individual contracts entered into between him and them.

3. Where one or more persons desire to procure timber under this act through the services of an agent appointed for that purpose and the quantity to be procured in any one continuous period of 12 months exceeds $50 in stumpage value, the amount to be paid the agent for his services shall not exceed a fair recompense for the time, labor, and money expended by him in the undertaking, and said compensation must be determined at the time of the appointment and must be set forth in the contract between the parties, a copy of which must be presented with the application.

4. The proper protection of the timber and undergrowth necessarily varies with the nature of the topography, soil, and forests. No timber not matured may be cut, and each tree must be utilized for some beneficial purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste. All brush, tops, lops, and other forest débris made in felling and removing timber under these rules and regulations shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the Chief of Field Division, and failure on the part of

an applicant or an agent cutting for an applicant to comply with this requirement will render him liable for all expenses incurred by the Chief of Field Division in putting this regulation into effect.

5. Permits granted under these instructions shall limit the area of the cutting so as to embrace only as much land as is necessary to produce the quantity of timber applied for and the lands to be cut over shall be so described in the application that they may be identified from the description set forth. Waste of timber will be discountenanced. Stumps will be cut so as to cause the least possible waste, and all trees will be utilized to as low a diameter in the tops as possible.

6. In every case where timber is to be procured through the medium of an agent and said agent is a sawmill operator and the amount of timber applied for exceeds $50 in stumpage value, a bond equal to the amount of the triple stumpage value of the timber applied for will be required conditioned to the faithful performance of the requirements contained in these rules and regulations and of the above referred to agreement entered into between the special agent and the beneficiary or beneficiaries of the cutting relative to the disposal of the refuse.

7. Applications filed under the above act shall set forth the names and legal residence of persons applying to fell and remove timber thereunder and the names and legal residence of persons who are to use the same. If the applicant be a corporation, the application shall set forth the State in which the corporation was incorporated. It shall also contain the amount of timber required by each applicant, the use to be made thereof, a description of the land from which the timber is to be cut, the date it is desired to begin cutting, and, where the cutting is to be done through the medium of an agent, the contract price to be paid to said agent. The application must be verified by an applicant.

8. Blank forms for making applications may be procured from the chief of field division for the division in which the land on which the cutting is to be done is situated. The application when executed is to be filed with that chief of field division. Immediately upon receipt of said application the chief of field division shall cause an investigation to be made of the lands and of material statements in the application. With this respect he shall be guided by the instructions contained in circular of August 21, 1907 (36 L. D. 73). Said instructions as promulgated were intended to be applicable to investigations upon applications for the free use of timber on vacant, unreserved, nonmineral, public lands. They are hereby declared to be also applicable to investigations relative to the application for free use of timber upon vacant, unreserved, mineral, public lands. Whenever they are to be applied to the latter mentioned class of applications the term mineral will be used instead of the term nonmineral.

9. Upon completion of an investigation the chief of field division may, if he considers the facts warrant it, grant a license, subject to revocation or revision by the Commissioner of the General Land Office, and he shall transmit the application, together with a report thereupon, and a copy of the license if one be granted. The report shall show:

(1) The description of the land to be cut over.

(2) Whether the lands are mineral.

(3) Whether the applicants are: (*a*) Qualified to fell and remove, and (*b*) authorized to use the timber applied for.

(4) What percentage of the matured timber may be taken consistent with proper protection of the remaining timber and undergrowth.

(5) The method prescribed for the disposition of the tops, lops, and other débris.

10. The above-referred-to act and the rules and regulations contained herein authorize the cutting of timber from vacant, unreserved lands subject to mineral entry only. Lands subject to mineral entry are such lands as are known to contain such deposits of mineral as warrant a prudent person in expending his time or money in the reasonable expectation of developing a mine thereon, but where cutting is done in good faith by a qualified person supposedly in compliance with these instructions, and it is subsequently determined that the land on which the cutting is done is nonmineral in character, he may set up as a defense the act of March 3, 1891 (26 Stat. 1093), in such States as are covered by that act.

11. A permit granted by a chief of field division under these instructions shall be subject to annulment or revision by the Commissioner of the General Land Office, and all rights and privileges thereunder shall terminate at the expiration of the period of one year from the date of the granting of the permit by the chief of field division. Persons who commence cutting upon receipt of a permit from a chief of field division before final approval by the Commissioner of the General Land Office will be liable to the Government for a reasonable stumpage value for timber so taken in the event that the permit is not finally approved by the commissioner because improperly granted. Where permits are secured by fraud, or immature trees are taken, or timber is not taken or used in accordance with the terms of the law or these rules and regulations, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

12. These rules and regulations shall be in force from and after March 25, 1913, and supersede the rules and regulations contained in circular of March 16, 1909 (37 L. D. 492).

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

LEWIS C. LAYLIN,
Assistant Secretary.

(Acts omitted.)

[Reported, 42 L. D. 22]

CIRCULAR No. 223[1]

RULES AND REGULATIONS GOVERNING THE FREE USE OF TIMBER ON UNRESERVED VACANT NONMINERAL PUBLIC LANDS UNDER THE ACT OF MARCH 3, 1891 (26 STAT. 1093), AS EXTENDED BY THE ACTS OF FEBRUARY 13, 1893 (27 STAT. 444), JULY 1, 1898 (30 STAT. 618), AND MARCH 3, 1901 (31 STAT. 1436)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 25, 1913.

To settlers and residents of Colorado, Montana, Idaho, North Dakota, South Dakota, Wyoming, Nevada, Utah, Arizona, New Mexico, California, Oregon, and Washington, and to chiefs of field divisions and special agents of the General Land Office:

By the act of March 3, 1891 (26 Stat. 1093), as extended by the acts of February 13, 1893 (27 Stat. 444), July 1, 1898 (30 Stat. 618), and March 3, 1901 (31 Stat. 1436), it is provided that in the States of Colorado, Montana, Idaho, North Dakota, South Dakota, Wyoming, Nevada, Utah, Arizona, New Mexico, California, Oregon, and Washington:

> In any criminal prosecution or civil action by the United States for a trespass on such public timberlands, or to recover timber or lumber cut thereon, it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timberland for use in such State or Territory by a resident thereof for agricultural, mining, manufacturing, or domestic purposes, under rules and regulations made and prescribed by the Secretary of the Interior, and has not been transported out of the same; but nothing herein contained shall operate to enlarge the rights of any railway company to cut timber on the public domain: *Provided*, That the Secretary of the Interior may make suitable rules and regulations to carry out the provisions of this act, and he may designate the sections or tracts of land where timber may be cut, and it shall not be lawful to cut or remove any timber except as may be prescribed by such rules and regulations; but this act shall not operate to repeal the act of June 3, 1878, providing for the cutting of timber on mineral lands.

The act of March 3, 1891 (supra), originally extended to the District of Alaska, but it has been superseded in that respect by section 11 of the act of May 14, 1898 (30 Stat. 414), under which separate regulations are prescribed for that district.

The act of March 3, 1891 (supra), does not confer upon anyone the right to cut and remove timber from nonmineral public lands but, on the contrary, merely provides that such timber may be cut and removed for agricultural, mining, manufacturing, or domestic purposes as the Secretary of the Interior may permit and from such lands as he shall designate, in accordance with suitable rules and regulations which he may from time to time promulgate. The aforesaid act did not intend to provide a defense to anyone who cuts and removes timber on nonmineral public lands, unless the cutting and removal was in accordance with prescribed rules and regulations, otherwise the cutting must be considered a trespass.

In accordance with the authority expressly conferred upon the Secretary of the Interior by the terms of the act of March 3, 1891, supra, settlers upon public lands and other residents of the States above named are hereby granted the privilege of cutting and removing, free of charge, timber from unoccupied, unreserved, nonmineral public lands within said States, strictly for their own use when actually needed for firewood, fencing, building, or other agricultural, mining, manufacturing, and domestic purposes, under the following conditions:

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[1] Amended by Circulars of Nov. 3, 1919, pp. 1510 and 1511.

1. Timber not to exceed $50 in stumpage value in any one continuous period of 12 months may be cut and removed without the previous filing of an application therefor, provided that the person desiring the timber shall first notify the proper chief of field division of the General Land Office by registered letter that he intends to cut timber on vacant unreserved, nonmineral public lands, and shall set forth therein the kind and quantity of timber to be cut and a description of the land on which the cutting is to be done, by township and range and by section and sectional subdivision thereof, if it be surveyed, or by natural objects sufficient to identify the land, if it be unsurveyed.

2. Where a greater quantity of timber than that specified in the preceding paragraph is desired during any one continuous period of 12 months, an application must first be filed with the chief of field division on a form to be furnished by him on request, and permission to cut the timber applied for may be granted by him, subject to revocation or revision by the Commissioner of the General Land Office, if in his opinion the applicant is a qualified beneficiary under the act of March 3, 1891, and actually needs the timber applied for; provided, however, that a license shall not be granted by a chief of field division permitting the cutting of timber exceeding $200 in stumpage value during any one continuous period of 12 months.

3. Permission to cut an amount of timber exceeding $200 in stumpage value during any one continuous period of 12 months shall be granted only upon showing of special necessity therefor and upon direct approval by the Secretary of the Interior.

4. Where one or more persons desiring timber under the provisions of the act of March 3, 1891, are not in a position to procure the same for themselves, an agent or agents may be appointed for that purpose. Such agent or agents shall not be paid more than a fair recompense for the time, labor, and money expended in procuring the timber and manufacturing the same into lumber, and no charge shall be made for the timber itself; and where the aggregate amount of timber to be cut during any one continuous period of 12 months exceeds $50 in stumpage value, said compensation must be set forth in a written contract to be entered into by the parties, and a copy thereof must be filed with the application.

5. Where a number of qualified persons combine and employ the same agent or agents to cut or manufacture the timber applied for, an application must be filed if the aggregate amount of timber to be cut in any one continuous period of 12 months together with all amounts previously cut by or for any one or more of the said applicants during the same period exceeds $50 in stumpage value. This rule shall also be applicable where the agent or agents cut for a number of persons but under individual contracts with them.

6. The proper protection of the timber and undergrowth necessarily varies with the nature of topography, soil, and forests. No timber not matured may be cut, and each tree taken must be utilized for some beneficial domestic purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste. All brush, tops, lops, and other forest débris made in felling and removing timber under these rules and regulations shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the chief of field division, and failure on the part of an applicant, or an agent cutting for an applicant, to comply with this requirement will render him liable for all expenses incurred by the chief of field division in putting this regulation into effect.

7. In every case where timber is to be procured through the medium of an agent, and said agent is a sawmill operator, and the amount of timber applied for exceeds $50 in stumpage value a bond equal to three times the amount of the stumpage value of the timber applied for will be required, conditioned on the faithful performance of the requirements contained in these rules and regulations and of the above-referred-to agreement entered into between the special agent and the beneficiary or beneficiaries of the cutting relative to the disposal of the refuse.

8. Permits granted under these instructions shall limit the area of the cutting so as to embrace only as much land as is necessary to produce the quantity of timber applied for, and the lands to be cut over shall be so described in the application that they may be identified from the description set forth. Waste of timber will be discountenanced. Stumps will be cut so as to cause the least possible waste, and all trees will be utilized to as low a diameter in the tops as possible.

9. Applications filed under the above act shall set forth the names and legal residences of persons applying to fell and remove timber thereunder and the names and legal residences of persons who are to use the same. If the applicant be a corporation, the application shall set forth the State in which the corporation was incorporated. It shall also contain the amount of timber required by each applicant, the use to be made thereof, a description of the land from which the timber is to be cut, and the date it is desired to begin cutting. The application must be verified by an applicant.

10. The application when executed is to be filed with the chief of field division for the division in which the land on which the cutting is to be done is situated. He shall note upon the application the date when said application was filed in his office and immediately cause an investigation to be made in compliance with the instructions contained in circular of August 21, 1907, (36 L. D. 73). He shall also set forth in his report the stumpage value of the timber applied for. If the cutting is to be done by a sawmill operator he shall require a bond to be filed with him as above set forth. Upon the completion of an investigation the chief of field division shall note upon the application the action taken by him and shall then transmit the application and bond, if a bond be required, together with a report thereupon, and a copy of the license, if one be granted, to the Commissioner of the General Land Office. The report shall contain the agreement

relative to the disposition of the tops, lops, and other débris, and when a bond is required said agreement shall be incorporated into the bond.

11. A permit granted by a chief of field division shall be subject to annulment or revision by the Commissioner of the General Land Office, and all rights and privileges thereunder shall terminate at the expiration of the period of one year from the date of the granting of the permit by the chief of field division. Persons who commence cutting upon receipt of a permit from a chief of field division before final approval by the Commissioner of the General Land Office will be liable to the Government for a reasonable stumpage value for timber so taken in the event that the permit is not finally approved because improperly granted. Where permits are secured by fraud, or immature trees are taken, or timber is not taken or used in accordance with the terms of the law or these rules and regulations, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

12.[2] Timber cut under these rules and regulations is not to be exported from the State in which it is cut, except as authorized by the act of July 1, 1898 (30 Stats. 618), providing for the export of timber from a specified area in the State of Wyoming into the State of Idaho, and by the act of March 3, 1901 (31 Stat. 1439), providing for the export of timber from a specified area in the State of Montana into the State of Wyoming.

13. The cutting of timber for sale and speculation or for use by others than those who apply for the same is strictly prohibited by these rules and regulations.

14. These rules and regulations shall be in force from and after March 25, 1913, and supersede the rules and regulations contained in circular of February 10, 1900 (29 L. D. 572).

Respectfully,

FRED DENNETT, *Commissioner.*

Approved.

LEWIS C. LAYLIN, *Assistant Secretary.*

(Acts omitted.)

CIRCULAR No. 306

SUGGESTIONS REGARDING THE CUTTING OF TIMBER BY ENTRYMEN ON THEIR HOMESTEAD CLAIMS

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 7, 1914.

1. Homestead claimants who have made bona fide settlements upon public land, and who are living upon, cultivating, and improving the same in accordance with law and the rules and regulations of this department, with the intention of acquiring title thereto, are permitted to cut and remove, or cause to be cut and removed, from the portion thereof being cleared for cultivation, so much timber as is actually necessary for that purpose, or for buildings, fences, and other improvements on the land entered.

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[2] See amendments, pp. 1510 and 1511.

2. In clearing for cultivation, should there be a surplus of timber over what is needed for the purposes above specified, the entryman may sell or dispose of such surplus; but it is not allowable to denude the land of its timber for the purpose of sale or speculation before the title has been conveyed to him by patent.

3. It is not permissible to cut timber for sale, even when the money procured therefrom is to be used for improving or cultivating the land or supporting the claimant or his family.

4. The abandonment of a settlement claim after the timber has been removed is presumptive evidence that the claim was made for the primary purpose of obtaining the timber.

5. A bona fide settler upon unsurveyed public land who intends to acquire title to the land under the homestead laws as soon as he is allowed to do so after survey, and who, in good faith, is complying with the rules and regulations relative to residence, cultivation, and improvements, is permitted the same privileges with regard to the cutting of timber upon his claim as are allowed to the bona fide homesteader, and is subject to the same restrictions.

6. Under the act of March 4, 1913 (37 Stat. 1015), certain timber which was killed or seriously damaged by forest fires prior to the date of the passage of the act may be disposed of by the Secretary of the Interior under such rules and regulations as he shall prescribe. The act applies to the disposition of this class of timber upon certain unperfected claims, including claims initiated under the homestead laws. The rules and regulations governing the disposition of such timber are contained in Circular No. 258,[a] approved August 1, 1913 (42 L. D. 300), a copy of which may be obtained upon request from the Commissioner of the General Land Office, Washington, D. C., or from the Chief of Field Division of the General Land Office of the division in which the land is situated.

Very respectfully,

Clay Tallman, *Commissioner.*

[Reported, 47 L. D. 296]

FREE USE OF TIMBER—ACT OF MARCH 3, 1919

Department of the Interior,
General Land Office,
Washington, D. C., November 3, 1919.

Chief of Field Division,
San Francisco, Calif.

On March 3, 1919, Congress approved an act (40 Stat. 1322), entitled "An act to grant to citizens of Modoc County, California, the right to cut timber in the State of Nevada for agricultural, mining, or other domestic purposes, and to remove such timber to Modoc County, California." The act provides as follows:

> That section eight of an act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, chapter five hundred and sixty-one, as amended by an act approved March third, eighteen hundred and ninety-one, chapter five hundred and fifty-nine, page

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[a] Circular No. 258 has been superseded by Circular No. 1093, p. 1515.

one thousand and ninety-three, volume twenty-six, United States Statutes at Large, be, and the same is hereby, amended by adding thereto the following:

That it shall be lawful for the Secretary of the Interior to grant permits under the provisions of the eighth section of the act of March third, eighteen hundred and ninety-one, to citizens of Modoc County, California, to cut timber in the State of Nevada for agricultural, mining, or other domestic purposes, and to remove the timber so cut to Modoc County, State of California.

Under the authority vested in the Secretary of the Interior by the above-cited act of March 3, 1919, the general restriction against the export of public timber from the State in which it is cut as set forth in section 12 of Circular No. 223 pertaining to the free use of timber on nonmineral public lands, issued March 25, 1913 (42 L. D. 22), with certain exceptions mentioned in that section, is hereby modified to the extent that citizens of Modoc County, Calif., are to be permitted to take timber from the vacant, nonmineral public lands of Nevada and to export the same for their use in Modoc County, Calif., pursuant to the rules and regulations contained in said Circular No. 223. It is to be observed that the privilege is to be limited to citizens of Modoc County, Calif.

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 47 L. D. 295]

FREE USE OF TIMBER—ACT OF MARCH 3, 1919

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 3, 1919.

CHIEF OF FIELD DIVISION,
Salt Lake City, Utah.

On March 3, 1919, Congress approved an act (40 Stat. 1321), entitled "An act to grant to citizens of Malheur County, Oregon, the right to cut timber in the State of Idaho for agricultural, mining, or other domestic purposes, and to remove such timber to Malheur County, Oregon." The act provides as follows:

That section eight of an act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, chapter five hundred and sixty-one, as amended by an act aproved March third, eighteen hundred and ninety-one, chapter five hundred and fifty-nine, page one thousand and ninety-three, volume twenty-six, United States Statutes at Large, be, and the same is hereby, amended by adding thereto the following:

That it shall be lawful for the Secretary of the Interior to grant permits under the provisions of the eighth section of the act of March third, eighteen hundred and ninety-one, to citizens of Malheur County, Oregon, to cut timber in the State of Idaho for agricultural, mining, or other domestic purposes, and to remove the timber so cut to Malheur County, State of Oregon.

Under the authority vested in the Secretary of the Interior, by the above-cited act of March 3, 1919, the general restriction against the export of public timber from the State in which it is cut as set forth in section 12 of Circular No. 223 pertaining to the free use of timber on nonmineral public lands, issued March 25, 1913 (42 L. D. 22), with certain exceptions mentioned in that section, is hereby modified to the extent that citizens of Malheur County, Oreg., are to be permitted to take timber from the vacant, nonmineral public lands of Idaho and to export the same for their use in Malheur County, Oreg., pursuant to the rules and regulations contained in said Circular No. 223. It is to be observed that the privilege is to be limited to citizens of Malheur County, Oreg.

CLAY TALLMAN, *Commissioner.*

Approved.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 48 L. D. 17]

CIRCULAR NO. 737

AN ACT AUTHORIZING THE CUTTING OF TIMBER BY CORPORATIONS ORGANIZED IN ONE STATE AND CONDUCTING BUSINESS IN ANOTHER

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 21, 1921.

To Chiefs of Field Divisions:

On January 11, 1921, there became effective an act of Congress (41 Stat. 1088), which provides as follows:

> That section 1 of an act entitled "An act authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes," approved June 3, 1878, chapter 150, page 88, volume 20, United States Statutes at Large, and section 8 of an act entitled "An act to repeal timber-culture laws, and for other purposes," approved March 3, 1891, as amended by an act approved March 3, 1891, chapter 559, page 1093, volume 26, United States Statutes at Large, and the several acts amendatory thereof, be, and the same are hereby, extended so that it shall be lawful for the Secretary of the Interior to grant permits to corporations incorporated under a Federal law of the United States or incorporated under the laws of a State or Territory of the United States, other than the State in which the privilege is requested, said permits to confer the same rights and benefits upon such corporations as are conferred by the aforesaid acts upon corporations incorporated in the State in which the privilege is to be exercised: *Provided*, That all such corporations shall first have complied with the laws of that State so as to entitle them to do business therein; but nothing herein shall operate to enlarge the rights of any railway company to cut timber on the public domain.

The cutting of timber under the provisions of this act must be done in conformity with the rules and regulations issued March 25, 1913, Circulars Nos. 222 and 223 (42 L. D. 22 and 30).

The departmental holding in the case of Centerville Mining & Milling Co. rendered July 9, 1910 (39 L. D. 80), by reason of the passage of said act, is no longer controlling.

Very respectfully,

CLAY TALLMAN, *Commissioner.*

Approved February 21, 1921.

ALEXANDER T. VOGELSANG,
First Assistant Secretary.

[Reported, 48 L. D. 608]

CIRCULAR NO. 818

CITIZENS OF WASHINGTON AND KANE COUNTIES, UTAH, GRANTED THE RIGHT TO CUT TIMBER IN THE STATE OF ARIZONA FOR CERTAIN PURPOSES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 28, 1922.

Chiefs of Field Divisions:

On February 27, 1922, there was approved an act of Congress (42 Stat. 398), which provides as follows:

> That section 8 of an act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March 3, 1891, as amended by an act approved March 3, 1891, chapter 559, page 1093, volume 26, United States Statutes at Large, be, and the same is hereby, amended by adding thereto the following:
> "That it shall be lawful for the Secretary of the Interior to grant permits, under the provisions of section 8 of the act of March 3, 1891, to citizens of Washignton County and of Kane County, Utah, to cut timber on the public lands of the counties of Mohave and Coconino, Arizona, for agricultural, mining, and other domestic purposes, and remove the timber so cut to said Washington County and Kane County, Utah."

The cutting of timber under the provisions of this act must be done in conformity with the rules and regulations issued March 25, 1913, Circulars Nos. 222 and 223 (42 L. D. 22 and 30).

Very respectfully,

WILLIAIM SPRY, *Commissioner.*

Approved March 28, 1922.

E. C. FINNEY,
First Assistant Secretary.

[Reported, 51 L. D. 311]

CIRCULAR NO. 1048

RULES AND REGULATIONS GOVERNING THE FREE USE OF TIMBER UPON OIL AND GAS PROSPECTING PERMITS AND LEASES BY PERMITTEES AND LESSEES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, January 11, 1926.

To Oil and Gas Prospecting Permittees and Lessees and Division Inspectors of the Interior Department:

In accordance with the authority conferred upon the Secretary of the Interior by section 32 of the act of February 25, 1920 (41 Stat. 437), the following rules and regulations shall govern the free use of timber for fuel in drilling operations by oil and gas permittees and lessees:

1. Any oil and gas prospecting permittee, lessee, or their assignees, desiring timber to be used for fuel in drilling operations on a prospecting permit or lease not within a national forest, shall file appli-

cation therefor, with the division inspector for the division within which the permit or lease is situated, upon a form furnished by him on request.

2. Upon the filing of an application required by the preceding paragraph the division inspector will cause investigation to be made, and permission to cut the timber applied for may be granted by him, *Provided* the timber is not taken from lands occupied by a settler or embraced in an unperfected homestead entry.

3. The applicant shall be notified by registered mail of the decision by the division inspector, in all cases where the permit applied for is not granted and he shall be allowed 30 days from service of notice within which to appeal from such decision to the Commissioner of the General Land Office.

4. Where the land involved in the oil and gas prospecting permit or lease is occupied by a settler or is embraced in an unperfected homestead entry, the applicant must serve notice by registered mail, on the settler, or entryman, showing the amount and kind of timber he has applied for.

(*a*) Evidence of service of such notice must be furnished the division inspector.

(*b*) The settler or entryman shall be allowed 30 days from service of notice within which to show cause why the permit should not be granted.

(*c*) The division inspector will transmit the application to the Commissioner of the General Land Office, together with any protests against the issuance of the permit that may be filed by the settler or entryman, and his report and recommendation as to the issuance of said permit.

(*d*) Permits in such cases will be issued only where there is an abundance of timber on the land, and the removal thereof; will not materially affect the use of the land by the agricultural claimant.

5. The applicant shall be notified by registered mail of the decision of the Commissioner of the General Land Office, in all cases where the permit applied for is not granted and the settler or homestead entryman shall be notified in a like manner before the issuance of the permit in all cases where protests are filed against the issuance of such permit. An appeal to the Secretary of the Interior from the commissioner's decision may be filed within 30 days from service of notice.

6. No permit will be issued where title to the surface has passed from the United States.

7. A permit granted under these regulations, shall embrace no land not included in the oil and gas prospecting permit or lease, issued or assigned to the applicant.

8. All rights and privileges under a permit issued under these instructions, shall terminate upon the expiration or cancellation of the oil and gas prospecting permit or lease, or upon the discovery of oil in sufficient quantity for use as fuel in drilling operations.

9. Timber cut under a permit issued under these instructions may be used for fuel in drilling operations conducted on the land embraced in the oil and gas prospecting permit or lease, used as a basis for such permit only, and all brush, tops, lops, and other débris made in felling and removing the timber shall be disposed of as best

adapted to the protection of the remaining growth, and in such manner as shall be prescribed by the division inspector and failure on the part of the permittee to comply with this requirement will render him liable for all expenses incurred by the division inspector in putting this regulation into effect.

10. Where permits are secured by fraud or timber is not used in accordance with these rules and regulations, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

11. The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited by these rules and regulations.

William Spry, *Commissioner.*

Approved January 11, 1926.

E. C. Finney,
First Assistant Secretary.

[Reported, 51 L. D. 574]

Circular No. 1093 [3] (Superseding Circular No. 258)

REGULATIONS GOVERNING THE SALE OF DEAD OR DOWN TIMBER OR TIMBER KILLED OR SERIOUSLY DAMAGED BY FOREST FIRES

Department of the Interior,
General Land Office,
Washington, September 11, 1926.

Division Inspectors.

Sirs: The act of July 3, 1926 (44 Stat. 890), amended the act of March 4, 1913 (37 Stat. 1015), to read as follows:

> That the Secretary of the Interior is hereby authorized, under such rules as he may prescribe, to sell and dispose of to the highest bidder, at public auction or through sealed bids, dead or down timber, or timber which has been seriously or permanently damaged by forest fires, on any lands of the United States, outside the boundaries of national forests, including those embraced in unperfected claims under any of the public land laws, also upon the ceded Indian lands, the proceeds of all such sales to be covered into the Treasury of the United States: *Provided*, That such dead, down, or damaged timber upon any lands embraced in an existing claim shall be disposed of only upon the application or with the written consent of such claimant, and the money received from the sale of such timber on any such lands shall be kept in a special fund to await the final determination of the claim.
>
> Sec. 2. That upon the certification of the Secretary of the Interior that any such claim has been finally approved and patented, the Secretary of the Treasury is hereby authorized and directed to pay to such claimant, his heirs, or legal representatives, the money received from the sale of such timber upon his land, after deducting therefrom the expenses of the sale; and upon the certification of the Secretary of the Interior that any such claim has been finally rejected and canceled, the Secretary of the Treasury is hereby authorized and directed to transfer the money derived from the sale of such timber upon the lands embraced in such claim to the general fund in the Treasury derived from the sale of public lands, unless by legislation the lands from which the timber had been removed had been theretofore appropriated to the benefit of an Indian tribe or otherwise, in which event the net proceeds derived from the sale of the timber shall be transferred to the fund of such tribe or otherwise credited or distributed as by law provided.

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[3] Amended by Circular No. 1112, p. 1521.

This act permits the sale of all dead or down timber and timber seriously or permanently damaged by forest fires on vacant public lands outside of national forests, including ceded Indian lands, and including lands in the Territory of Alaska, and also lands embraced within unperfected or unapproved claims, grants, or selections over which the Department of the Interior has jurisdiction.

Pursuant to the authority granted by the above act, the following rules and regulations are hereby prescribed:

1. Where such dead or down or fire-killed or damaged timber is found, or upon receipt of an application to purchase any of such described timber, upon vacant, unreserved Government lands, including ceded Indian lands, the division inspector of the division within which the timber is situated will cause a reconnaissance cruise to be made in order to obtain an approximate scale of the timber to be offered for sale, and will cause to be blazed, or otherwise marked, the outside boundaries of the areas from which the timber is to be sold so that they may be readily distinguishable on the ground. Reports on such cruises, with appropriate recommendations, should be promptly submitted to this office and should contain the following information:

(*a*) Description of the land upon which the timber is situated by township and range and legal subdivisions thereof, if surveyed, or by natural objects sufficient to identify the land if unsurveyed.

(*b*) Approximate percentage of the timber on the described area that is dead, down, or damaged by fire.

(*c*) The approximate scale in thousand feet board measure of timber subject to sale.

(*d*) The approximate market value thereof per thousand feet board measure and the prospects of a sale in its present condition and location, and fixing a minimum stumpage price per thousand feet board measure for the timber to be cut; and

(*e*) The method and approximate expense of disposing of the brush, tops, lops, and other forest débris which will result from the felling and removing of the timber.

2.[4] Upon consideration of the report, the Commissioner of the General Land Office will, if the amount or the value of the timber warrants it, instruct the division inspector to offer the same for sale under sealed bids, by advertisement covering a period of not less than thirty (30) days, if in a daily paper to be published at least twice a week, and if in a weekly paper at least four consecutive weeks, next preceding the time set for the opening of the bids, in two representative newspapers of general circulation in each field division wherein the timber to be sold is situated, and if the proposed sale be for 20,000,000 feet board measure or more of timber available by location to a single logging operation, the division inspector will also cause an advertisement of the proposed sale to be inserted once in two lumber-trade journals of general circulation. The division inspector will also, during the period of the advertising, post copies of the advertisement where they will attract the notice of the general public.

3. The notice of sale must announce the time and place of filing bids; contain a careful description of the land on which the timber

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[4] See amendment, p. 1521.

is situated, giving the township and range and legal subdivision, or approximate legal subdivision, whether surveyed or unsurveyed, and shall also designate the location with reference to water courses, mountain tops, or other well-known natural objects; the approximate amount in board feet and minimum stumpage value of the timber to be sold; the sum required to be deposited with the bid; the conditions by which the purchaser will be bound; and the name and address of the division inspector from whom full information can be obtained. It shall also be stated that bidders offering a sum based on a rate less than the minimum stumpage price of the timber mentioned therein will not be considered and that the right to reject any or all bids is reserved.

4. Each bid submitted must be sealed and transmitted to the division inspector having jurisdiction of the timber sale for which the bid is submitted.

Each bid must state whether it is for the whole of the timber offered for sale in the advertisement or for only a part thereof, and, if the latter, it should designate how much, and describe the land from which the timber is to be taken. No bid will be accepted for less than all the timber offered on a legal subdivision. Each bid must state the amount per thousand feet which the bidder will pay for the timber.

Each bid shall be accompanied by a certified check for at least 20 per cent of the amount bid, said certified check to be made payable to the Commissioner of the General Land Office, and to be retained by the division inspector and disposed of as provided in rules 7 and 8.

5. The division inspector will number the bids consecutively in the order in which they are received, and indorse thereon the date and hour of receipt and will on the day and at the hour set therefor open said bids and award said timber, either in one lot or in separate lots, located upon definitely described areas of land, in such manner as shall afford the greatest amount of revenue therefrom, to the highest bidder or bidders. Should two or more bids in the same amount be received for the same timber, the award will be made to the bidder whose bid was first received. In such case the award may be made with due regard to other timber purchased by the same persons, and also with a view to preventing a monopoly. The division inspector will, immediately upon the acceptance of said bid or bids, notify the bidder or bidders thereof, and shall also promptly forward a report thereon to the Commissioner of the General Land Office.

6. Upon notice from a division inspector to a bidder that his bid has been accepted, he must, within 30 days from the receipt of such notice, enter into a contract with the Government through the Commissioner of the General Land Office acting as its agent, subject to the approval of the Secretary of the Interior, and shall execute and file therewith a bond with proper sureties thereupon, the penalty of the bond to be of an amount which shall be 50 per cent of the stumpage value of the timber estimated in accordance with the provisions contained in subdivision (*c*), section 1, of these regulations; blank forms to be used in executing contracts and bonds under the act governing the sale of timber herein have been approved by the Secretary of the Interior and copies of the same will be furnished by the division inspector. The bond shall be conditioned for the payment for said

timber, and for the faithful performance of the above referred to contract, and for the observance of the regulations hereinafter set forth. Bonds should be prepared and executed in accordance with the regulations of the department governing the same.

In the event that the bidder whose bid has been accepted shall fail to submit the required bond within the specified time, the division inspector shall cause his action in accepting said bid to be revoked by written notice to the bidder (see rule 7 as to the check), and he shall then accept the bid received by him next in order of time should the bids be equal, otherwise the next highest bid. If the bid accepted was the only bid received, the timber will be readvertised for sale.

7. Immediately upon the execution of the contract and bond the division inspector shall transmit the same, together with the certified check originally deposited, to the Commissioner of the General Land Office.

Upon receipt of such certified checks in the General Land Office, they shall be immediately deposited for collection and the moneys derived therefrom placed in his special account in the United States Treasury to remain there subject to final disposition as provided in the act of Congress, and the receiving clerk of the General Land Office shall issue his receipt to the purchaser for the amount deposited in each case.

The Commissioner of the General Land Office will execute the contract and transmit it with the bond to the Secretary of the Interior for his approval or rejection. The division inspector will be notified of the action taken thereon, and will, in turn, notify the bidder. Upon approval of the contract and bond by the Secretary of the Interior, the amount paid shall be credited as part payment of the purchase price.

8. Should a bidder or bidders whose bid or bids have been accepted by a division inspector fail to submit a bond or bonds, as herein provided, the division inspector will at once transmit said certified check or checks to the Commissioner of the General Land Office, and the amount or amounts called for therein will be collected and retained by the United States as a forfeit.

Upon the acceptance of a bid or bids by a division inspector, the certified checks of the bidders whose bids were rejected shall be returned to them.

9. Immediately upon notification of the approval of a sale by the Secretary of the Interior, the division inspector will cause an inspector to go over the area from which the timber is to be removed, with the purchaser or his representative, and designate the timber subject to be taken under the act, and shall also point out the boundaries of the land as blazed or otherwise marked by the inspector who made the appraisal. Cutting and removal of the timber may then be commenced.

10. All settlements for timber cut pursuant to this act shall be based upon an actual scale made after the timber has been cut. The timber shall be scaled by an inspector designated by the division inspector, on the banking ground, landing, or skidway, and before it is placed on cars or put into the water. When the timber shall be ready for removal the purchaser shall submit a written notice thereof to the division inspector. The scale must be made within 30 days

after receipt of such notice. It will not be necessary, however, to wait until all of the timber covered by the contract has been cut before a scale may be made. The scale shall be made in accordance with Scribner's rules, and each log or stick scaled shall be stamped "U. S." on at least one end. The inspector shall keep a record in board feet of all timber scaled and file the same with the division inspector.

11. No timber shall be removed until it has been paid for. Although permission may be granted for the removal of installments of timber, yet the sale is not to be considered a sale by installments, and failure on the part of the purchaser to cut and remove all of the timber covered by the terms of the sale will be considered a violation of the terms of the contract and render the obligors in the bond liable for whatever damage shall be incurred by the Government. The amount originally deposited shall be credited as an advance payment and installments of timber up to that amount may be removed without requiring a further deposit. When the stumpage value of an installment of timber, together with the installments previously cut, exceeds the sum originally deposited, a further deposit in a sum sufficient to equal the difference will be required before permission to remove that installment can be granted. All deposits must be made by certified check, payable to the Commissioner of the General Land Office, and all checks thus deposited shall be transmitted to him at once by the division inspector.

12. The purchaser shall keep a record of the amount in board feet of timber cut and shall submit a monthly report to the division inspector.

13. All brush, tops, lops, and other forest débris, made in felling and removing the timber, shall be disposed of in such manner as shall be set forth in an agreement entered into between the purchaser and the division inspector. If the purchaser fails to comply with the requirements contained in said agreement, then the division inspector shall cause said débris to be disposed of and charge the expense thereof to the purchaser, provided, however, that written notice shall first be given by the division inspector that such action will be taken if said instructions are not complied with within 30 days from the service of such notice. The aforesaid bond shall be conditioned to this requirement.

14. The division inspector shall see that so far as practicable all branches of the logging operations keep pace with each other, and the piling or burning of the brush and other débris shall not be allowed to fall behind the cutting and removing of the logs.

15. The division inspector shall determine the period within which all of the timber embraced within a sale shall be cut and removed, and completion of the cutting and removing within such period as shall be thus fixed shall be made a condition in the contract and in the bond. The action of the division inspector shall be governed by the quantity of timber involved, the topography of the land, the accessibility of the timber, and any other circumstances that may have an influence on the cutting and removing. Owing to the nature of the timber subject to disposal under these rules and regulations, the cutting should be done as rapidly as possible and the final time limits should be restricted as far as practicable logging conditions

will permit. Any extension of the period fixed in the contract will be granted only upon a showing that the completion of the cutting was unavoidably delayed by causes over which the purchaser had no control and that the interests of the Government will not be prejudiced thereby and must be approved by the Secretary of the Interior.

16. Timber of the character described in the above act, located upon existing unperfected claims and upon unapproved selections and grants, may be disposed of in the same manner and under the same conditions as set forth in the preceding paragraphs, provided, however, that an application shall first be filed with the proper division inspector by such claimant, selector, or grantee, or by a prospective purchaser, with the written consent of such claimant, selector, or grantee, requesting that the timber on said claim, selection, or grant be offered for sale. Nothing herein shall prohibit such claimant, selector, or grantee from bidding for the timber thus offered.

17. Nothing in the aforesaid act or these regulations shall be construed to abrogate or in any way modify the rights of settlers or homestead entrymen to cut and dispose of timber on their homestead claims, as explained in Circular No. 306, approved March 7, 1914, or the rights of miners to the enjoyment of the surface embraced within the area of their mining claims, as provided by section 2322, United States Revised Statutes.

18. If it shall be shown that there are settlers or residents within the vicinity of the vacant lands involved, who are in urgent need of timber for domestic purposes and it shall be necessary to procure the same from said lands, permits may be granted under applications filed in accordance with the provisions contained in the acts of June 3, 1878 (20 Stat. 88), or March 3, 1891 (26 Stat. 1093), as extended by the acts of July 1, 1898 (30 Stat. 618), and March 3, 1901 (31 Stat. 1439); provided, however, that said applications shall be filed prior to the advertising of the timber for sale as hereinbefore set forth. The amounts of timber thus applied for shall be deducted from the amount offered for sale and the advertisement shall state that the sale shall be subject to the rights of such applicants to procure the amounts of timber applied for.

19. The above act specifies the manner of disposition of the proceeds from the sale of the timber authorized thereby. Where the timber is on ceded Indian lands, disposed of in trust for the Indians, or the timber is on unperfected claims, or unapproved selections and grants, the division inspectors shall render to the Commissioner of the General Land Office expense accounts showing in each case all costs incident to the administration of the law with reference to such sales in order that the net proceeds therefrom may be ascertained and deposited in the appropriate fund.

20. Division inspectors shall cause investigations to be made from time to time and submit a final report at the expiration of the period allowed for the cutting and removing, showing whether or not the law and rules and regulations have been complied with and setting forth any infraction of the same.

21. The cutting or removing of the timber referred to herein in any other manner than that authorized by these regulations, will be considered a trespass.

Very respectfully,

THOS. C. HAVELL, *Acting Commissioner.*

Approved September 11, 1926.

E. C. FINNEY,
First Assistant Secretary.

(Forms omitted.)

[Reported, 52 L. D. 42]

CIRCULAR NO. 1112

AMENDING CIRCULAR NO. 1093, REGULATIONS GOVERNING THE SALE OF DEAD OR DOWN TIMBER OR TIMBER KILLED OR SERIOUSLY DAMAGED BY FOREST FIRES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, February 25, 1927.

Division Inspectors.

SIRS: Circular No. 1093 of September 11, 1926, is hereby amended by substituting for paragraph 2 thereof, the following:

2. After consideration of the report, the Commissioner of the General Land Office will, if deemed advisable, direct the division inspector to offer the timber for sale under sealed bids by advertising for a period of 30 days, as follows:

(*a*) In cases of small quantities of timber amounting in value to $1,000 or less, the sale should be advertised by the posting of notices only.

(*b*) Where larger quantities of timber are involved, the sale should be advertised in one or two representative newspapers of general circulation in the field division wherein the timber to be sold is situated, once a week for four weeks if in a daily paper, or if in a weekly paper, for four consecutive weeks, next preceding the time set for the opening of the bids. And if the proposed sale be for 20,000,000 feet, board measure, or more, of timber available by location to a single logging operation, the division inspector will also cause an advertisement of the proposed sale to be inserted once in two lumber trade journals of general circulation. During the period of advertising the division inspector will also post copies of the advertisement where they will attract the notice of the general public.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved February 25, 1927.

E. C. FINNEY,
First Assistant Secretary.

[illegible] of the period fixed in the contract will [illegible] the removal of the timber was unavoidably delayed by causes over which the purchaser had no control and that the interests of the Government will not be prejudiced [illegible] by the Secretary of the Interior.

16. Timber [illegible] disaster described in the above act, located upon [illegible] entries and upon unapproved selections and grants, may be disposed of in the same manner and under the same conditions as set forth in the preceding paragraphs, provided, however, that an application shall first be filed with the proper division inspector by such claimant, selector, or grantee, or by a prospective purchaser, with the written consent of such claimant, selector, or grantee, requesting that the timber on said claim, selection, or grant [illegible] Nothing herein shall prohibit such claimant, [illegible]

17. Nothing in the aforesaid [illegible] to abrogate or in any way modify the rights of settlers on homestead [illegible] timber on their homestead claims [illegible] No. 296, approved March 7, 1914, or the rights [illegible] of the surface embraced within the area of their mining claims, as provided by [illegible]

18. [illegible]

[illegible] filed in accordance with the provisions [illegible] provided, however, that said applications shall be [illegible]

[illegible] sales in order that the net proceeds therefrom may be ascertained and deposited in the appropriate fund.

[illegible] investigations to be made from time to time and submit a final report [illegible] showing whether or not the [illegible] regulations have been complied with and setting forth any infraction of the same.

TOWN SITES, PARKS, CEMETERIES, RECREATIONAL SITES, ETC.[1]

[Reported, 52 L. D. 106]

CIRCULAR NO. 1122

REGULATIONS RELATING TO TOWN SITES, PARKS, CEMETERIES, RECREATIONAL SITES, ETC.

(For former regulations see 5 L. D. 265, 32 L. D. 156, and 38 L. D. 92)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 27, 1927.

TOWN SITES

TOWN SITES RESERVED BY THE PRESIDENT

* * * * * * *

RESERVATION OF LAND

1. Under section 2380, United States Revised Statutes, public land may be reserved by the President for town-site purposes on his own motion, or petitions may be addressed to him therefor, setting forth facts warranting his action under said section duly verified by the affidavit of one or more persons, such petitions to be filed with the President, the department, the General Land Office, or with the district land office for transmission to the General Land Office.

SURVEY AND APPRAISAL

2. Town sites reserved under section 2380, or under any other law directing their disposition under section 2381, will be surveyed, when ordered by the department, under the supervision of the General Land Office, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the Secretary of the Interior. Each appraiser must take his oath of office and transmit the same to the General Land Office before proceeding with his work. Said office must be notified by wire of the time when such appraiser or appraisers enter on duty. They will examine each lot to be appraised and determine the fair and just cash value thereof.

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[1] There have been printed under this title the general regulations relating to town sites, parks, cemeteries, recreational sites, etc., and the regulations of greatest importance at the present time relating to particular town-site sales.

Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

SCHEDULE OF APPRAISEMENT

3. The schedule of appraisement must be prepared in triplicate on forms furnished by the General Land Office, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to said office, and when approved by the Secretary of the Interior one copy will be sent to the district land office. In the case of reclamation town sites, one copy of the schedule will be sent to the Commissioner of Reclamation.

NOTICE OF SALE

4. Each sale will be given such publicity as may be deemed proper in the particular case. Appropriate instructions in this connection will be given in the order for sale.

TIME, PLACE, AND TERMS OF SALE

5. Special regulations will be issued in each case prescribing the time when, the place where, and the terms under which the lots will be offered.

QUALIFICATIONS AND RESTRICTIONS

6. No restriction is made as to the number of lots one person may purchase. Bids and payments may be made through agents, but not by mail, or at any time or place other than that fixed in the notice of sale.

COMBINATIONS IN RESTRAINT OF THE SALE

7. All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

CERTIFICATES

8. All lots purchased at the same time, for cash, in the same town site, and by the same person should be included in one certificate, in order to prevent unnecessary multiplicity of patents.

Where cash certificates can not immediately issue, because payment for the lots has not been made in full, and where the regulations authorize the issuance of nontransferable memorandum certificates. more than one lot should not be included in the same certificate.

REOFFERING AT PUBLIC SALE—PRIVATE ENTRY

9. In the absence of special instructions in a particular case, an offering at public sale may be adjourned or closed, in the discretion of the officer conducting the sale. If adjourned, the unsold lots will be held for future disposition at public sale. If closed, the unsold lots will become subject to private entry at the appraised price.

Lots sold at public sale and forfeited because of nonpayment of the purchase price, or for any other reason, will be held for further offering at public sale, unless reentry of the lots at private sale, at a designated price, is authorized by the regulations under which the lots are sold.

Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

Town Sites Platted by or for Occupants

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In a town site platted and disposed of under sections 2382 to 2386, inclusive, United States Revised Statutes, the procedure is as follows:

SURVEY AND PLAT

1. The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (1) that the land does not include an area in excess of 640 acres, unless the lots, buildings, and improvements cover a greater area, and then only to the extent so occupied and improved; (2) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the town-site survey are tied to a designated, permanent, and thoroughly identified monument; (3) that the streets, squares, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town are correctly delineated thereon; and (4) the exterior lines of all existing railroad rights of way and station grounds. The lots should not exceed 4,200 square feet, except in cases where the configuration necessitates a different area. The above required facts should be verified by the oath of the surveyor entered upon the margin of the plat.

A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and such plat and statement must be verified by the oath of the party acting for and in behalf of the occupants of the land.

TRANSCRIPT OF PLAT AND STATEMENT

2. Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each duly verified by the certificate of the county recorder, and accompanied by the testimony of two witnesses that such town has been established in good faith, and showing the number of inhabitants thereof, and when it was so established, shall be filed with the register of the land district in which the town site is located, who will immediately transmit the same to the General Land Office for consideration, and upon the approval thereof one of said duplicate plats and statements will be returned to the register for his files.

NOTICE OF FILING PLAT

3. On filing such plat and statement the register will prepare and conspicuously post in his office a notice to the effect that the official plat of such town site has been filed and that he is ready to receive applications by lot occupants to make proof for and purchase the lots occupied by them, respectively. The newspapers in the vicinity should be given copies of the notice as an item of news, and such other publicity should be given it as can be done without expense.

ADJUSTMENT TO LINES OF PUBLIC SURVEY

4. When the town site is upon land over which the township surveys have not been extended the district cadastral engineer will be notified of the town-site survey and be furnished by the General Land Office with an outline plat showing the exterior lines thereof, with courses and distances, the date of the survey and the approval thereof, and thereafter when the township surveys have been extended over the land the exterior lines of the town site may be adjusted thereto where it can be done without impairing vested rights.

DEPARTMENT MAY MAKE TOWN-SITE SURVEY

5. Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as above required, within twelve months from the establishment of a town on the public domain, will authorize the Secretary of the Interior to cause a survey and plat to be made thereof, the lots in which shall be disposed of at an increase of 50 per centum on the minimum price.

PRICE OF LOTS

6. The minimum price for all lots of 4,200 square feet or less is $10 per lot, except in cases where the Secretary of the Interior causes the survey into lots and blocks to be made by the Government, in which case the minimum price is $15 per lot for such lots. The minimum price for all lots in excess of 4,200 square feet will be computed by adding to said minimum price of $10 or $15, as the case may be, the sum of $4 for each additional 1,000 square feet or fractional part thereof in excess of 4,200 square feet, in the absence of special provisions in a particular case.

PREEMPTION CLAIMS

7. A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the district office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases and in manner and form and for the time as provided in the act of March 3, 1879 (20 Stat. 472).[a] (See 38 L. D. 131, 40 L. D. 459, and 43 L. D. 216.)

Where a husband and wife are joint settlers, and the husband purchases two lots, as stated, the wife may also purchase an "additional lot" upon which she has placed substantial improvements. (39 L. D. 516.)

PREEMPTION PROOF

8. Preemption proof may be made before the register, or any officer duly authorized by law, and must show by record or documentary evidence where such evidence is usually required, and where not so required by the testimony of witnesses, (1) due publication of the register's notice; (2) the claimant's age; (3) his citizenship; and (4) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid when the proof is made. Entry of public lands under other laws, or in other town sites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry. No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

HEARINGS

9. Hearings will be ordered and conducted in accordance with the Rules of Practice where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application, on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within 30 days from notice thereof.

CONFLICTING MINERAL CLAIMS

10. Mineral surveys, locations, applications, and entries covering lots in such town sites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims,

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[a] See instructions of Oct. 19, 1929, p. 1149.

if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

MINERAL PATENTS

11. Lots wholly covered by outstanding mineral patents are not subject to entry under the town-site law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: "Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued."

MILL SITES

12. The continued use and occupation within a town site of a duly located mill-site claim under section 2337, United States Revised Statutes, from a time prior to a settlement and occupation thereon for town-site purposes, will defeat the rights of the claimant under the town-site laws to any part of the land within such mill site.

RAILROAD RIGHTS OF WAY

13. Railroad rights of way and station grounds, when approved by the department, are subject to all valid rights existing at the date of filing the application for such rights of way or station grounds.

FORFEITURE OF PREEMPTION RIGHT

14. All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon as hereinbefore provided, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the register will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

PUBLIC SALE

15. The public sale will be conducted in the form and manner herein provided for the sale of town lots under section 2381, United States Revised Statutes, except that no lot shall be sold for less than the minimum price herein fixed therefor, and such lots as may not be so disposed of shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution as the Secretary of the Interior may order from time to time after at least three months' notice.

TOWN SITES ENTERED BY TRUSTEES

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SEGREGATION BY TOWN-SITE SETTLEMENT

1. Public lands settled upon and occupied as a town site are thereby segregated from entry under the agricultural land laws, and may be entered under sections 2387 to 2389, subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, United States Revised Statutes.

BY WHOM ENTRY MAY BE MADE

2. If the town is incorporated the entry must be made by the corporate authorities or by the mayor or other principal officer authorized so to do by resolution or ordinance of the town board or city council. If the town is not incorporated, the entry must be made by the judge of the county court upon petition addressed to him therefor, signed by such number of actual occupants of lots therein as may be required by the laws of the State or Territory in which the town is situated. Private individuals, organizations, or corporations are not authorized to make such entries.

TRUST

3. The entry must be made in trust (1) as to the occupied lots, for the several use and benefit of the occupants thereof according to their respective interests, and (2) as to the unoccupied lots, for the use and benefit of the municipality, the public, or the occupants collectively as a community. Such entries can not be made for the benefit of one individual, or organization, or corporation, but only for the benefit of the actual inhabitants and occupants of an established town. Prospective town sites can not be so entered.

EXECUTION OF TRUST

4. The execution of the trust as to the disposal of the lots and the proceeds of sales is to be conducted under regulations prescribed by the State or Territorial laws. Acts of trustees not in accordance with such regulations are void.

AREA THAT MAY BE ENTERED

5. The amount of land that may be entered under this act is proportionate to the number of inhabitants. One hundred and less than 200 inhabitants may enter not to exceed 320 acres; 200 and less than 1,000 inhabitants may enter not to exceed 640 acres; and where the inhabitants number 1,000 and over, an amount not to exceed 1,280 acres may be entered; and for each additional 1,000 inhabitants, not to exceed 5,000 in all, a further amount of 320 acres may be allowed. When the number of inhabitants of a town is less than 100 the town site shall be restricted to the land actually occupied for town purposes, by legal subdivisions.

ENTRY OF UNSURVEYED LAND

6. Unsurveyed public land upon which a town has been established may be entered hereunder. In such case a special survey should be procured by application to the district cadastral engineer therefor, the cost of which survey will be paid out of the general appropriations for public surveys. When the plat of such survey is filed in the district office, application may be made to enter the land described therein.

DECLARATORY STATEMENTS

7. Declaratory statements may be filed as the initiatory step for the entry of the land in all cases where the occupants are not ready to apply for entry, and should be so filed in order to protect their rights. The statement should be signed and filed by the officer entitled to make entry under the law, and should show the number of inhabitants, that the land is occupied for trade, business, and other town-site purposes, and the date when first so occupied, and declare the purpose of the occupants to enter it under the town-site laws. It should include only such lands as the town is entitled to enter by Government subdivisions where surveyed, and if not surveyed the land should be described so it may be easily identified.

PROOF

8. The notice of intention to make proof must be filed and the notice for publication must be issued, published, and posted at the applicant's expense as in ordinary cases, and in manner and form and for the time provided in the act of March 3, 1879 (20 Stat. 472). (See 38 L. D. 131; 40 L. D. 459, and 43 L. D. 216.) The proof may be made before the register or any officer duly authorized by law, and must show, by record or documentary evidence, where such evidence is usually required, and where not so required, by the testimony of at least two of the advertised witnesses, (1) due publication of the register's notice; (2) if an incorporated town, proof of incorporation, which should be a certified copy of the order of incorporation, or if by legislative enactment, a citation to such act; (3) certified record evidence of the election, qualification, and the authority of the officer making entry; (4) the number of town-site occupants and claimants on each occupied Government subdivision; (5) the number of inhabitants in the town site; (6) the character, extent, and value of town-site improvements located on each Government subdivision; and (7) the date when the land was first used for town-site purposes.

AREA ENTERABLE

9. Entry can not be made hereunder of a greater quantity of land than 2,560 acres, unless the excess in area is actually settled upon, inhabited, improved, and used for business and municipal purposes.

CONFLICTING MINERAL CLAIMS

10. Under said sections 2386, 2392, and section 16 of the act of March 3, 1891 (26 Stat. 1101), the title to lands acquired hereunder

will be subject to all valid prior rights to unpatented mining claims or possessions held under existing law, and paramount patents may be issued thereafter to such mineral claimants, notwithstanding the prior town-site patent.

All lands covered by patented minerals claims must be omitted from town-site entries hereunder. Government subdivisions of land, made fractional by the omission of such patented claims, will be designated by lot numbers on segregation diagram prepared by the district cadastral engineer.

PUBLIC RESERVATIONS

11. Reservations for the use of the United States Government are not subject to entry hereunder.

MILL SITES

12. The continued use and occupation within a town site of a duly located mill-site claim under section 2337, United States Revised Statutes, from a time prior to a settlement and occupation thereof for town-site purposes, will defeat the rights of the claimant under the town-site laws to any part of the land within such mill site.

RAILROAD RIGHTS OF WAY

13. Railroad rights of way and station grounds, when approved by the department, are subject to all valid rights existing at the date of filing the application for such rights of way or station grounds.

CHANGE IN METHOD OF ENTRY

14. Where proceedings have been had for the entry of lots under sections 2382 to 2386, inclusive, United States Revised Statutes, but no patent has issued thereunder, the occupants may avail themselves, if the town authorities choose to do so, of the provisions of said sections 2387 to 2389 and make proof and entry thereunder; provided, however, that in addition to the minimum price for the land applied for there shall be paid, before patent issues therefor, by the parties applying for such change of entry, all costs of surveying and platting such town site and expenses incident thereto incurred by the Government under the provisions of said sections 2382 to 2386. On application to this office the applicants will be informed of the amount of said expense to be paid in excess of the purchase price of the land in order to effectuate such change of entry.

ADDITIONAL ENTRIES

15. Where town-site entry has been or may hereafter be made, under the provisions of said sections 2387 to 2393, additional entries may be made, under the provisions of section 4 of the act approved March 3, 1877 (19 Stat. 392), of such contiguous tracts as may be occupied for town-site purposes, but such additional entry shall not, together with all prior entries made for such town site, be in excess

of the area to which the town may be entitled at date of the additional entry by virtue of its population as prescribed in said section 2389; provided, however, that such area shall not exceed 2,560 acres. Such additional entries will be made in the same manner and under the same regulations as are herein provided for entries under said sections 2387 to 2393, inclusive.

ENTRY AND PAYMENT

16. When town-site proof has been submitted hereunder the register will, if he approves the same, forward it to the General Land Office with his recommendation thereon, without collecting the purchase money and without issuing the final papers. If the proof so submitted is found satisfactory the register will be notified thereof, and if no objections exist in his office he will notify the applicant thereof, and on payment of the minimum price fixed by the law for the purchase of the land he will issue the final papers.

TOWN SITES IN RECLAMATION PROJECTS

* * * * * * *

WITHDRAWALS—SURVEYS

1. The Commissioner of Reclamation shall from time to time recommend to the Secretary of the Interior, through the Commissioner of the General Land Office, the withdrawal and reservation of such lands for town-site purposes, under the acts of April 16 and June 27, 1906 (34 Stat. 116 and 519), as he may deem advisable. He shall, when in his judgment the public interests require it, from time to time, cause not less than a legal subdivision, according to the official township surveys, of the lands so reserved to be surveyed into town lots, with appropriate reservations for public purposes. The plats and field notes of such surveys shall be prepared in triplicate for each town site, and shall be submitted for the approval of the Commissioner of the General Land Office, who, after such approval, shall submit the original plat for the approval of the Secretary of the Interior.

TIME AND PLACE OF SALE, APPRAISEMENTS, ETC.

2. The Commissioner of Reclamation shall from time to time recommend to the Secretary of the Interior the sale, the time and place of sale, the appraisement, the appraisers to be appointed, the officer to superintend the sale, and the compensation of the appraisers and superintendent, and the newspapers for the publication of the notice of sale, of such portions of the surveyed lots as in his judgment the public interest may then require to be appraised and sold. The recommendations in this regulation above required shall be submitted through the Commissioner of the General Land Office for his concurrence or dissent. The Commissioner of the General Land Office shall prepare and submit to the Secretary of the Interior the details and appointments of the appraisers and the superintendent of sale in accordance with the approved recommendations,

and when detailed or appointed he shall give them all necessary instructions; and he shall also prepare and transmit the notice of sale for publication. The report of the appraisers shall be transmitted to the Secretary of the Interior through the Commissioner of the General Land Office. The sale will be conducted in accordance with the general regulations under section 2381, United States Revised Statutes, and subject to the special regulations herein prescribed.

INSTALLMENT PAYMENTS

3. Whenever the Secretary of the Interior, in the exercise of the discretion conferred upon him by section 2 of the act of June 11, 1910 (36 Stat. 465), shall order the payment of the purchase price of lots, sold in town sites created under the laws in said act mentioned, to be made in annual installments, the same will be done under such regulations as may be issued in each particular instance.

REAPPRAISEMENTS

4. In all cases where the Secretary of the Interior shall direct the reappraisement of unsold lots under the first section of the said act of June 11, 1910, the reappraisement will be conducted under the regulations provided for under the original appraisement of lots in town sites created under the laws in said act mentioned. The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value, which offering will be conducted under the regulations providing for the public sale of lots in such town sites.

ADDITIONAL TOWN SITES

5. The Commissioner of Reclamation from time to time in like manner may cause one or more additional legal subdivisions of the lands so reserved for town-site purposes to be so surveyed into town lots, with appropriate reservations for public purposes; and he shall submit such further recommendations for appraisal and sale, in accordance with these regulations, as he may deem necessary or advisable; and he may in like manner submit recommendations for the reappraisal and sale of lots previously offered for sale and remaining unsold, as authorized by act of June 11, 1910 (36 Stat. 465).

PUBLIC RESERVES

6. The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required under the regulations in this circular for patents to public reserves in Oklahoma town sites under section 22 of the act approved May 2, 1890 (26 Stat. 91).

GRANT OF LANDS IN RECLAMATION TOWN SITES FOR SCHOOL PURPOSES

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At any time after the approval of the survey of any Government reclamation town site and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district. in order to obtain title under the act of October 31, 1919, should file, through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein specifically describing the same by lot and block numbers, as delineated and designated on the approved town-site plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the act, in order that this department may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the town site is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the project manager of the Reclamation Service having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation town site situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

The application and proof must be filed in the district land office wherein the land applied for is situate, and if the register thereof finds the same sufficient under these regulations, and if the Reclamation Service makes favorable report upon the said application; the register will issue certificate entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

TOWN SITES IN FORMER INDIAN RESERVATIONS IN OKLAHOMA

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TOWN-SITE ENTRIES

1. The entry of lands in former Indian reservations in Oklahoma for town-site purposes is governed by section 22 of the act of May 2, 1890 (26 Stat. 81, 91), and the act of March 11, 1902 (32 Stat. 63).

Town-site entries made under section 22 of the act of May 2, 1890, must conform to the applicable regulations herein provided for entries under sections 2380 to 2394, inclusive, United States Revised Statutes, but in addition proof of the requirements made in the said section 22 and in the special regulations issued thereunder approved August 7, 1909 (38 L. D. 92, 115), must be furnished. The regulations are not reprinted here because there is but little present need for reference thereto.

ENTRY OF PUBLIC RESERVES IN EXISTING OKLAHOMA TOWN SITES

2. Applications for patents to the tracts reserved for public purposes, in all towns in Oklahoma created under said section 22 or under any other act where tracts have been reserved for such purposes under said section 22, may be filed on behalf of the municipalities whose corporate limits cover the land in which such reservations are situated. The application should be made by the mayor or other proper municipal officer and describe the reservations to be patented according to the approved plats of said town site, and the same should be accompanied with the proof of the municipal organization of the town similar to that above provided for the disposition of the proceeds derived from the commutation of homestead entries for town-site purposes under said section 22, and proof must also be filed therewith of the authority of the officer filing the application to make the same with the proper record evidence of his election and qualification as such officer. The application and proof must be filed in the district land office; and if the register thereof find the same sufficient under these regulations, he will issue the certificate of entry in the form provided therefor.

ENTRY OF PUBLIC RESERVES IN VACATED OKLAHOMA TOWN SITES

3. Under the act approved May 11, 1896 (29 Stat. 116), where a town site or an addition to a town site in a homestead commuted to a town-site entry under the second proviso of section 22 of the act approved May 2, 1890 (26 Stat. 91), has been vacated under the laws of Oklahoma and patents for the public reservations therein have not been issued, such reservations will be disposed of in the following manner:

(1) *Application and proof by the original entryman.*—Application for a patent to such reservations may be filed by the original entryman within six months from the vacation of the town site, and proof must be filed by him, with the register, of the due vacation of such town site in accordance with the requirements of the laws of Oklahoma, which proof must consist of a copy of the record evidence of such vacation duly certified. Such proof must also be accompanied with evidence that the corporate authorities of the municipality, if one be organized, in which the reservations were situated prior to such vacation, have been personally served 30 days prior to making such proof with notice of the application and of the date the proof will be made. If the proof be found sufficient the entry will be allowed for the reservations as described in the town-site plat upon receipt of the payment of the homestead price. If the municipality is represented at the time of making proof, it may be heard in opposition to the application and decision be rendered thereon subject to appeal as in other cases.

(2) *Reservations disposed of as isolated tracts.*—In case of the failure of the original entryman to apply for patent to such reservations within six months from the vacation of such town site, or in case such reserves have been patented to the municipality and it has ceased to exist by reason of such vacation, the reservations will be disposed of as isolated tracts under the provisions of section 2455, United States Revised Statutes, and the acts amendatory thereof, and the regulations issued thereunder.

SALE OF PATENTED PUBLIC RESERVES IN VACATED OKLAHOMA TOWN SITES

4. Reservations may be sold by an existing municipal corporation, upon the vacation of the town site, where patent has been issued to such municipality therefor, the proceeds of such sale to be covered into the school fund of such corporation. (See City of Enid, 30 L. D. 352.)

Town Sites in Former Indian Reservations in Minnesota

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Town sites on ceded Indian lands in Minnesota will be disposed of in accordance with regulations herein prescribed for town sites created or disposed of under sections 2380 to 2394, inclusive, United States Revised Statutes.

Town Sites in Former Indian Reservations in States Other Than Oklahoma and Minnesota

Authority for the survey and disposal of town sites in former Indian reservations, in States other than Oklahoma and Minnesota, is contained in the acts of Congress authorizing the survey and disposal of lands in such reservations.

Below is noted a list of reservations and the acts of Congress authorizing the establishment of town sites therein:

RESERVATION	ACT OF CONGRESS
Blackfeet, Mont	Mar. 1, 1907 (34 Stat. 1015, 1039).
Cheyenne River, S. Dak	May 29, 1908 (35 Stat. 461, 463).
Coeur d'Alene, Idaho	June 21, 1906 (34 Stat. 325, 337).
Colorado River, Ariz. and Calif	Apr. 30, 1908 (35 Stat. 70, 77).
Colville, Wash	Mar. 22, 1906 (34 Stat. 80, 82).
Crow, Mont	Apr. 27, 1904 (33 Stat. 360, 361).
Flathead, Mont	June 21, 1906 (34 Stat. 325, 354).
Fort Belknap, Mont	Mar. 3, 1921 (41 Stat. 1355, 1356).
Fort Berthold, N. Dak	June 1, 1910 (36 Stat. 456, 457).
Fort Hall, Mont	May 31, 1918 (40 Stat. 592).
Fort Peck, Mont	May 30, 1908 (35 Stat. 561, 563).
Pine Ridge, S. Dak	May 27, 1910 (36 Stat. 440, 441).
Rosebud, S. Dak	Mar. 2, 1907 (34 Stat. 1230, 1231).
Rosebud, S. Dak	May 30, 1910 (36 Stat. 448, 449).
Shoshone, Wyo	Mar. 3, 1905 (33 Stat. 1020, 1021).
Spokane, Wash	May 29, 1908 (35 Stat. 458, 459).
Standing Rock, N. Dak. and S. Dak	May 29, 1908 (35 Stat. 461, 463).
Standing Rock, N. Dak	Feb. 14, 1913 (37 Stat. 675, 676).
Uintah, Utah	Mar. 3, 1905 (33 Stat. 1048, 1069).
Walker River, Nev	May 27, 1902 (32 Stat. 245, 261).
Wind River, Wyo	Mar. 3, 1905 (33 Stat. 1020, 1021).
Yuma, Ariz	Apr. 30, 1908 (35 Stat. 70, 77).

Town Sites on Mineral Lands

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The general town-site laws, comprised in sections 2380 to 2394, United States Revised Statutes, authorize the entry of town sites, or the sale of lots therein, upon public lands which may include unpatented mineral claims, but the rights of mineral claimants upon any land entered or sold under said town-site laws are expressly protected by sections 2386 and 2392. These two sections recognize the superior rights, as against any town-site claimant—whether corporate, community, or individual—of all claimants for mineral veins possessed agreeably to local custom, or for any valid mining claim or possession held under existing law. The precedence and superiority so accorded to mineral claims, however, depend in final analysis upon the question of fact whether, at date of town-site entry or lot sale, the lands claimed under the mining laws were "known to contain minerals of such extent and value as to justify expenditures for the purpose of extracting them" (39 L. D. 356). Where an affirmative showing in such behalf is made in due course by the mineral claimant, his right to a patent for the land (subject to the distinction hereinafter noted as to incorporated towns), will not be prejudiced by any previous town-site entry, deed, or patent covering the same land (26 L. D. 144; 29 L. D. 426; 32 L. D. 211; 34 L. D. 276 and 596).

Under said general town-site laws, as construed by the department and the courts, an entry including unpatented mineral lands may be made for an incorporated town as well as for an unincorporated town, the law requiring that in the former case the entry shall be made by the corporate authorities, and in the latter by the county judge (34 L. D. 24). While such general right of entry by or for incorporated towns and cities is therefore independent of anything contained in section 16 of the act of March 3, 1891 (26 Stat. 1095), it will be seen that that section in terms announces the right to enter mineral lands. The protection afforded to mineral claims by the body of section 16 is similar to that given generally in said sections 2386 and 2392, Revised Statutes, but the proviso to section 16 is as follows:

> *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

The department has never viewed said proviso as warranting, under any circumstances, the allowance of entry for a mineral vein independently of "the surface ground appertaining thereto," nor is such an entry provided for in the general mining laws. But said proviso creates one distinction between unincorporated and incorporated towns as regards the relative rights of town-site occupants and mineral claimants; which is, that whereas the town-site patent will, in either case, carry absolute title to any mineral not known to exist at the date of town-site entry, the adverse rights of mineral and town-lot claimants within incorporated towns are hinged upon priority of initiation. That is to say, that after entry is made for such town, no entry by a mineral-vein applicant will be allowed for any land owned and occupied under the town-site law by a party whose possession antedated the inception of the mineral applicant's claim, even though such land was known, at date of the town-site entry, to contain valuable minerals.

Subject to the distinction above noted, the foregoing principles apply to all mineral claims within town sites entered or disposed of under any of the laws above mentioned, and also to mineral claims within town sites disposable under special acts containing no reference to the rights of mining claimants.

The law does not require that town-site entries shall exclude any mineral claim or possession except such as may have been patented (29 L. D. 21). Mineral claims which have not been patented may be excluded from a town-site entry at the option of the town-site applicant, who must, in that event, furnish satisfactory proof that the exclusion covers a "valid mining claim or possession held under existing law" (33 L. D. 542). The exclusion of a mill-site claim from a town-site entry is necessary only in cases where the mill-site claimant shall have been in occupation of the ground, under regular location, from a time antedating its occupation for town-site purposes. The issue of priority in such cases may be raised by the town-site applicant, the mill-site claimant, or the Government.

County-Seat Town Sites

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The instructions contained in circular of August 7, 1909 (38 L. D. 92, 107), will be followed in connection with applications for county-seat town sites.

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Right of Transferees of Town Lots

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The purchaser of a town lot, which is sold on the installment plan, may transfer his equitable interest in the lot, prior to the payment of the last installment of the purchase price, but the Government will not recognize anyone but the original purchaser and will issue all necessary papers and also the patent in his name. By such course, the Government is relieved of all unnecessary responsibility and the patent, when issued, inures to the benefit of the transferee.

Formerly patents were issued to transferees, but based on departmental instructions of October 11, 1911, patents are now issued only in the names of the original purchasers, except where their issuance to transferees is authorized by the act of July 9, 1914 (38 Stat. 454), and instructions thereunder approved August 5, 1914 (43 L. D. 361).

Town Sites in Alaska

Information relative to the special town site laws which have been enacted relating to the disposition of lands as town sites in the Territory of Alaska is contained in Circular No. 491.

Town-Site Plats

Photolithographic copies of town-site plats will be furnished, when available, at the rate of 50 cents each.

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PARKS AND CEMETERIES

Sale of Public Lands to Cities and Towns for Parks and Cemeteries

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ENTRY OF SURVEYED LAND

1. The right of entry under the act approved September 30, 1890, (26 Stat. 502), is restricted to incorporated cities and towns, and each of such cities and towns shall be allowed to make entries of tracts of unreserved and unappropriated public land, including land in Alaska, by Government subdivisions, not exceeding, in all entries hereunder by such city or town, a quarter section in area, all of which must lie within 3 miles of the corporate limits of the city or town for which the entries are made.

ENTRY OF UNSURVEYED LAND

2. If the public surveys have not been extended over the land sought by any city or town under the provisions of said act, it shall first be necessary for the proper corporate authority to apply to the district cadastral engineer of the district in which the tract in question is located for a special survey of the outboundaries of such tract. The application should describe the character of the land sought to be surveyed and, as accurately as possible, its area and geographical location. Tracts covered by such special surveys must be as nearly as practicable in square form, and entries of the same will not be allowed until after the surveys shall have been approved by the district cadastral engineer and accepted by the Commissioner of the General Land Office. The current appropriation for " surveying the public lands " being applicable to the survey of lines of reservations, as well as to the extension of the ordinary lines of the system of public-land surveys, the cost of the surveys of all unsurveyed lands selected under the provisions of said act of September 30, 1890, will be paid for out of said appropriation, the same as the special surveys of the outboundaries of town sites and for like reasons (see case of Fort Pierre, 18 C. L. O. 117), and the surveyors who execute such special surveys will report whether the land is either mineral in character or within an organized mining district.

APPLICATION AND PROOF

3. An application for the purposes indicated herein can only be made by the municipal authorities of an incorporated city or town; and in all cases the entries will be made and patents issued to the municipality in its corporate name, for the specific purpose or purposes mentioned in said act.

The land must be paid for at the Government price per acre, after proof has been furnished satisfactorily showing—

(1) Thirty days' publication of notice of intention to make entry, in the same manner as in homestead and other cases.[b] (38 L. D. 131, 40 L. D. 459, and 43 L. D. 216.)

(2) The official character and authority of the officer or officers making the entry.

(3) A certificate of the officer having custody of the record of incorporation, setting forth the fact and date of incorporation of the city or town by which entry is to be made, and the extent and location of its corporate limits.

(4) The testimony of the applicant and two published witnesses to the effect that the land applied for is vacant and unappropriated by any other party, and as to whether the same is either mineral in character or located within an organized mining district or within a mining region.

(5) In case the land applied for is described by metes and bounds, as established by a special survey of the same, that the applicant and two of the published witnesses have testified from personal knowledge obtained by observation and measurements that the land to be entered is wholly within 3 miles of the corporate limits of the city or town for which entry is to be made.

CERTIFICATES

4. Where the proof shows that the land is mineral in character, located in a mining district, or is within a region known as mineral lands, the certificate of entry shall contain the following proviso:

> *Provided,* That no title shall be hereby acquired to any mineral deposits within the limits of the above described tract of land, all such deposits therein being reserved as the property of the United States.

SALE OF PUBLIC LANDS TO ASSOCIATIONS AND CORPORATIONS FOR CEMETERIES

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ENTRY OF SURVEYED LAND

1. Under the act approved March 1, 1907 (34 Stat. 1052), the right to purchase public land for cemetery purposes is limited to religious, fraternal, and private corporations or associations, empowered to hold real estate for cemetery purposes by the laws under which they are organized. Such corporation or association shall be allowed to make but one entry of not more than 80 acres of contiguous tracts by Government subdivisions of nonmineral, unreserved, and unappropriated public land, including public land in Alaska.

ENTRY OF UNSURVEYED LAND

2. If the public surveys have not been extended over the land so sought to be entered, the corporation or association should first apply to the proper district cadastral engineer for a special survey of the exterior lines of the tract desired, describing the topographical char-

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[b] See instructions of Oct. 19, 1929, p. 1149.

acter of the land and its area and geographical location as accurately as possible. Such tracts must be as nearly as practicable in a rectangular from, and after the survey and plat thereof has been made, approved by the district cadastral engineeer, accepted by the General Land Office, and filed in the district office, application may then be made for the entry of the land under said act. The cost of such surveys will be paid out of the current appropriation for "surveying the public lands," and the deputies employed will report whether the land is mineral in character.

PROOF

3. The proof must satisfactorily show—

(1) The filing of a notice of intention to make proof, the issuance, in manner and form so far as possible as in other cases provided, of the publication notice, to be published and posted for the time and in the manner provided by the act of March 3, 1879 (20 Stat. 472), and the regulations thereunder (38 L. D. 131, 40 L. D. 459, 43 L. D. 216).

(2) The official character of the officer or officers applying on behalf of the association or corporation to make the entry, and his or their express authority to do so conferred by action of the association.

(3) A copy of the record, certified by the officer having charge thereof, showing the due incorporation and organization and date thereof of the association or corporation and its location and address. The law under which it is organized and by which it derives its authority to hold real estate for cemetery purposes must also be cited.

(4) That the land applied for its nomineral, vacant, and unappropriated public land, and the extent to which it is used for cemetery purposes, and when first so used, if it is so used, which must be shown by the testimony of the applicant and two of the advertised witnesses.

PRICE

4. The land must be paid for at such price per acre as shall be determined by the Commissioner of the General Land Office, provided that in no case shall the price be less than $1.25 per acre.

PROCEDURE

5. Entries under this act must issue to the association or corporation in its corporate name, and the granting clause in the certificate should state that the patent to be issued for the tract desrcibed is "for cemetery purposes, subject to reversion 'to the United States should the land or any part thereof be sold or cease to be used for the purpose' in said act provided." Inasmuch, however, as the Commissioner of the General Land Office determines the amount of the purchase price under the existing conditions in each particular case, the register will, when proof is made to his satisfaction, immediately forward such proof to the General Land Office with his recommendation thereon without collecting any money as the purchase price and

without issuing the final papers. If said office finds the proof satisfactory, the commissioner will fix the purchase price, and the register will, on being notified thereof and no objection appearing thereto in his office, notify the applicant of the amount required and allow him 30 days from service of such notice to pay such purchase price, and on receipt thereof cash certificate will be issued.

RECREATIONAL SITES, ETC.

ACQUISITION OR USE OF PUBLIC LANDS BY STATES, COUNTIES, OR MUNICIPALITIES FOR RECREATIONAL PURPOSES [c]

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LANDS SUBJECT TO WITHDRAWAL

1. Unreserved nonmineral public lands not desired for Federal administration, surveyed or unsurveyed, exclusive of those situated in the Territory of Alaska, may be withheld from appropriation in aid of the classification and disposition or use authorized by the act of June 14, 1926 (44 Stat. 741), upon a proper petition therefor. Any withdrawal for such purpose will, however, be subject to valid existing appropriations under the public land laws legally maintained. The land must be surveyed before title may be acquired. The duration of these withdrawals will depend upon the good faith shown by the petitioners in prosecuting the necessary preliminary work in connection with the recreational project involved.

PETITIONS

2. Petitions for such withdrawal should be addressed to the Secretary of the Interior and filed in duplicate in the proper district land office, should describe the land desired withdrawn by legal subdivisions, if surveyed, or by metes and bounds in conformity with the regulations approved November 3, 1909 (38 L. D. 287), if unsurveyed, and contain a statement that the area is unoccupied and nonmineral and chiefly valuable for recreational purposes. Such petitions should set forth the plan of recreational development proposed, giving details as to any contemplated improvements, state whether acquisition is sought through exchange or purchase, or whether a lease is desired, and should contain proof or a citation of the authority of the official or officials signing the petition to act for the State or county or counties when a State or county recreational project is involved, or of the authority of either State or county officials to submit the petition in behalf of a municipality when a municipal project is concerned. In event that acquisition is sought through exchange, the petition of the State seeking the exchange should contain a description of the State land proffered as a basis therefor. The registers of the district land offices will not assign serial numbers to these petitions and will upon receipt forward them by special letter to the Commissioner of the General Land Office for action.

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[c] Regulations governing recreative sites were originally issued as Circular No. 1085, dated July 23, 1926. For supplemental instructions, see Circular No. 1156, p. 1062.

ACTION BY DIVISION INSPECTORS

3. In event of favorable action upon such a petition, the proper division inspector will, if necessary, be instructed to cause an examination to be made to determine whether the withdrawn land is nonmineral and chiefly valuable for recreational purposes and will thereafter submit report to the Commissioner of the General Land Office. The report submitted will also contain information as to the comparative values of the public and State lands involved when an exchange is proposed. In order that the department may determine a proper charge in case purchase or lease is desired the division inspector will ascertain and report what is a fair and reasonable price per acre or annual rental for the area, taking into consideration the purpose for which it is to be used. The Commissioner of the General Land Office will forward such reports to the Secretary of the Interior with recommendation.

APPLICATIONS

4. The Commissioner of the General Land Office will notify the register of the district land office in which the land is situated of the findings of the department and the register will then advise the State, county, or municipality which has requested the withdrawal thereof. Thereafter, in event the land has been found subject to use or acquisition under the law, such State, county, or municipality may file formal application for the land in the district land office, and all such applications will be given current serial numbers, noted upon the records, and transmitted with the returns from that office. No fixed forms of applications have been prepared, but these instructions should be followed as nearly as possible.

The application of a State for an exchange should follow in so far as applicable the form used by the State in making application for indemnity for losses in its school grant where the land tendered as a basis has been granted to the State by the United States for school or other purposes and has thereafter remained the property of the State. A deed of relinquishment of the base land must be executed by the proper State officer or officers and duly recorded. Such deed must be accompanied by a certificate of the officer, or officers, of the State charged with the care and disposal of the land reconveyed, showing that same has not been alienated or contracted to be alienated in any way by the State, that the said land is not in the possession of, or subject to the claim of any third party under any law or permission of the State, and that except for such conveyance the title of the State is unimpaired, together with a certificate of the recorder of deeds or official custodian of the records of transfers of real estate in the proper county, or a duly authenticated abstract of title, showing that at the time the reconveyance was recorded the title was in the State making the conveyance and that the land was free from encumbrances of any kind.

There should be tendered with the application of a State, county, or municipality to purchase or lease lands withdrawn under this law the amount fixed as the purchase price or as annual rental therefor. Such application should contain proof or a citation of the authority of the official or officials signing the application to represent the State, county, or municipality in the transaction. In so far as applicable the general regulations of the department governing the execution of contracts will be followed in the preparation of leases issued. The proceeds from sales or leases will be credited to "Sales of public lands" except in those instances in which other provision has been made in the laws authorizing disposition of the land.

Applications presented under these regulations not in substantial conformity with the requirements herein made and not accompanied by the prescribed proof will be rejected subject to appeal or curing the defect where possible.

RESERVATIONS AND CONDITIONS

5. Any patent or lease issued to a State, county, or municipality will contain the mineral reservation and forfeiture provision prescribed by the law. No provision is made at this time for development of the reserved mineral deposits in lands to be conveyed or leased under the terms of this law, and until such regulations shall have issued the reserved deposits will not be subject to disposition.

* * * * * * *

Leasing of Public Lands Near Springs for Erection of Bathhouses, Hotels, or Other Improvements [d]

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The filing of applications under the act of March 3, 1925 (43 Stat. 1133), and action on such applications will be governed by the following regulations:

LESSEES

1. Leases may issue under the act to any responsible persons or associations, which words are construed to include private corporations and municipalities.

LANDS TO WHICH APPLICABLE

2. Leases may issue for surveyed or unsurveyed unreserved public lands in the several States and in Alaska, situated near or adjacent to mineral, medicinal, or other springs, which are located upon unreserved public lands, and for public lands which have been withdrawn for the protection of such springs.

APPLICATION FOR LEASE

3. An application for lease should be made in duplicate, should be under oath, and should cover or include the following:

(*a*) Applicant's name and address.

(*b*) If applicant is a private corporation, a certified copy of the articles of incorporation.

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[d] The instructions under this heading were originally issued as Circular No. 1034, dated Oct. 6, 1925.

(*c*) If applicant is a municipality, the law or charter and procedure taken by which the municipality has become a legal body corporate.

An application by a private corporation or municipality should show that it is legally qualified to take the lease requested and that the taking of such lease has been duly authorized by its governing body.

(*d*) An accurate description of the land desired. If the land is surveyed it should be described with reference to the public-land surveys. A lease may be granted for part of a legal subdivision or for more than one legal subdivision, in the discretion of the Secretary of the Interior. If the land is unsurveyed, the description thereof should conform to requirements set forth in circular of November 3, 1909 (38 L. D. 287).

(*e*) The names and addresses of three persons to whom reference may be made as to applicant's reputation and business standing and as to his ability, both from a financial standpoint and otherwise, to carry out the contemplated project.

(*f*) The period of time for which the lease is desired, not to exceed 20 years, and the purpose for which the lease is sought, whether for the erection of a bathhouse, hotel, or other improvement for the accommodation of the public. It is important that the application should specify all purposes for which it is intended or desired to use the land, as a lease, if issued, will authorize the use of the land only for the purposes specified in the application, and its use for any other purpose will not be permitted. Thus, if an applicant for a hotel, in addition to using the land for ordinary hotel purposes, wishes to operate a billiard hall or moving-picture theater, etc., on the land, that fact should be disclosed in the application.

(*g*) Details as to the proposed improvements, including the estimated cost of construction and of subsequent maintenance; also the time when construction work will begin and when it will be completed, if the proposed lease is granted.

FIXING OF RATES

4. All leases issued hereunder will contain stipulations authorizing the Secretary of the Interior to fix the rates and prices for accommodations and services whenever this is deemed necessary. The charges which may be made may or may not be regulated by the Secretary of the Interior, as may be deemed proper in the particular case.

FILING OF APPLICATION

5. An application for lease should be filed in duplicate in the district land office, should be given a current serial number, and should be duly noted on the district land office records. If it appears that the land applied for is not subject to lease, the application should be rejected subject to the usual right of appeal. Otherwise, after notation, the register should attach to each copy of the application a statement as to the status of the land as shown by the district land office records and should transmit the original copy of the

application to the Commissioner of the General Land Office by special letter for notation on the General Land Office records and the duplicate copy to the division inspector for report.

ACTION BY DIVISION INSPECTOR

6. Upon receipt of an application the division inspector will cause a field examination to be made, if necessary, and thereafter he will submit report to the Commissioner of the General Land Office. The report should include the following information, if it will be of service in the consideration of the case, together with any other information which may be deemed essential:

(*a*) A topographic map of the areas adjacent to the spring or of the area applied for. If in the opinion of the division inspector the area should be divided, to enable the issuance of more than one lease, a proposed division should be shown.

(*b*) A determination of the quantity of water available from the spring and a plan of the work that should be done to develop and increase the flow, as well as to protect the spring from pollution or silting with an estimate as to the cost.

(*c*) An analysis of the water, which may be procured from the Bureau of Chemistry.

(*d*) Whether the contemplated use of the land is the highest or best use to which the land may be put under the act of March 3, 1925.

(*e*) A statement as to the distance of the land from centers of population and as to its accessibility.

(*f*) A statement as to whether the contemplated project will require closer supervision than can be given by the division inspector.

The report should show whether in the opinion of the division inspector, all things considered, the application should be allowed or rejected. It should also show the amount of the annual rental which in the opinion of the division inspector should be charged, if the lease is granted. In order to ascertain a proper charge, the division inspector should determine what is a fair and reasonable rental of the area, taking into consideration the purpose for which it is to be used and the probable value of the lease to the applicant. The report should also state any conditions or restrictions which in the opinion of the division inspector should be incorporated in a lease, if issued. In so far as applicable, the general regulations of the department governing the execution of contracts will be followed in the preparation of leases issued hereunder.

CONFLICTING APPLICATIONS

7. From and after the filing in the district land office of an application for lease, the lands applied for will not be subject to other appropriation under the public land laws. However, applications under other laws may be received and such applications will be suspended pending final action on the application for lease, unless a prior right to the land is claimed by settlement or otherwise, in which case the subsequent applications should be transmitted to the General Land Office for consideration. If the application for lease is subsequently approved, the conflicting suspended applications will

be rejected. On the other hand, if the application for lease is rejected, the conflicting suspended applications will be relieved from the suspension and will be disposed of as though the application for lease had not been filed.

FURTHER ACTION ON APPLICATION FOR LEASE

8. When a report has been received from the division inspector, the Commissioner of the General Land Office will make report to the Secretary of the Interior either recommending the allowance or the rejection of the application for lease. If the allowance of the application is recommended, the commissioner will submit a form of a proposed lease for consideration. Thereafter, the department will take such further action and will give such further directions as are considered proper.

DISCRETIONARY AUTHORITY OF THE SECRETARY OF THE INTERIOR

9. The granting of an application for lease is discretionary with the Secretary of the Interior, and any application may be granted or denied in part or in its entirety as may appear to be warranted in the particular case.

William Spry, *Commissioner.*

Approved April 27, 1927.

E. C. Finney,
First Assistant Secretary.

(Laws and forms omitted.)

Circular No. 1116

REGULATIONS FOR THE SALE OF LOTS IN THE ADDITION TO ALGOMA, OREG.

Department of the Interior,
General Land Office,
Washington, March 28, 1927.

Register, *Lakeview, Oreg.*

Sir: July 1, 1926, the plat of survey of the addition to Algoma town site was accepted by this office, and by letter of September 4, 1926, copies were sent you for filing in your office.

In accordance with the Executive order of May 12, 1925, by which the land was reserved for town-site purposes, the lots are to be sold under section 2381, Revised Statutes, subject to the reservation to the United States of perpetual seepage and flowage rights to lots embraced in original lot 3, section 37.

Date and place of sale.—You are directed to proceed to Klamath Falls, Oreg., and offer at public sale the unreserved lots in the addition to Algoma, Oreg., on Thursday, May 26, 1927, at 10 o'clock a. m., in the manner and on the terms herein prescribed.

Terms.—No lot will be sold for less than the appraised value. Lots sold for $50 or less shall be paid for in cash on the day of sale. Lots sold for over $50 may be paid for in three equal installments, one-third on the date of sale and the balance in two equal installments in one and two years from date of sale. Purchasers will not be required to show any qualifications as to age, citizenship, or otherwise, and any number of lots may be sold to any person who is the highest bidder for such lots.

Forfeiture.—If any person who has made partial payment on the lot purchased fails to make any succeeding payment required under these regulations at a date such payment becomes due, the money deposited by such person for such lot will be forfeited, and the lot, after forfeiture is declared, will be subject to disposition. Lots remaining unsold at the close of the sale, or thereafter declared forfeited for nonpayment of any sum of the purchase price, under the terms of the sale will be subject to private entry for cash at their appraised value.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States.

You are authorized to reject any and all bids for any lot and at any time suspend, enjoin, or postpone the sale of any lot or lots to such time and place as may be deemed proper, and to reappraise any lot or lots remaining unsold at the close of sale.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved March 28, 1927.

E. C. FINNEY,
First Assistant Secretary.

(List of appraisements omitted.)

CIRCULAR NO. 1166

REGULATIONS FOR THE SALE OF TOWN LOTS IN TOWNS WITHIN THE HUNTLEY PROJECT IRRIGATION DISTRICT, MONT. (TOWN SITES OF ANITA, BALLANTINE, HUNTLEY, OSBORN, POMPEYS PILLAR, AND WORDEN)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 26, 1928.

REGISTER, *Billings, Mont.*

SIR: Under and pursuant to the acts of April 16, 1906, and June 27, 1906 (34 Stat. 116, 519), and the general regulations issued under section 2381, Revised Statutes, Circular No. 1122, the unsold lots in the town sites of Huntley, Worden, Osborn, Ballantine, Anita, and Pompeys Pillar, within the Huntley project irrigation district, Mont., included in the attached list, will be offered for sale at public auction at not less than their appraised value at 10 a. m., October 8, 1928, in your office.

You are hereby detailed as auctioneer and superintendent of the sale of said lots. This detail is in connection with your duties as register of the district land office, and you will receive no additional compensation for conducting the sale.

Full payment for the lots may be made in cash at the time of the sale or one-fifth in cash and the balance in four equal annual installments, with interest at 6 per cent per annum on the deferred payments.

At the conclusion of the offering you will close the sale.

All lots sold subsequent to said public sale shall be sold in your office at the appraised value for cash at the time of sale, or two-fifths in cash and the balance in three equal annual installments, with interest at 6 per cent on the deferred payments.

I am transmitting herewith copies of the appraisal list of the lots to be offered for sale, a copy of a report, and the recommendation of the district counsel, Bureau of Reclamation, dated September 8, 1928, a copy of the letter of approval of the appraisal dated September 21, 1928, and a copy of instructions of August 28, 1928, recommending the appraisal and sale of said lots. Plats of said town sites are also inclosed.

Mimeograph copies hereof will be furnished you when available.

Very respectfully,

William Spry, *Commissioner*.

Approved September 26, 1928.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

Circular No. 1064

FURTHER SALE OF LOTS AT CHESTERFIELD, IDAHO, AUTHORIZED—FORMER SALES AT CHESTERFIELD AND MINIDOKA, IDAHO, CLOSED

Department of the Interior,
General Land Office,
Washington, May 15, 1926.

Register, *Blackfoot, Idaho.*

Sir: Sales of lots in the town sites of Chesterfield and Minidoka, Idaho, were conducted under your supervision in accordance with regulations contained in Circulars Nos. 1019 [e] and 1020, and by letters dated September 21 and October 26, 1925, you reported as to the lots sold. These reports do not state whether the sales were closed or adjourned. No reason appears, however, why the sales should not be closed, and they are hereby declared to be closed. Under the said regulations such lots as were offered at public sale and not sold may be sold at private sale, at the appraised values.

There are a few lots in the town site of Chesterfield, Idaho, now undisposed of, which were not included in the former offering, for the reason that at the time of such offering they were covered by preemption applications. The lots have since become subject to disposition, by reason of the relinquishment of the preemption claims. There are no such lots in the town site of Minidoka.

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[e] Circular No. 1019 which authorized sales of lots in the townsite of Chesterfield, for cash, on September 17, 1925, is not carried in this publication.

The following is a list of such lots in the town site of Chesterfield, as shown by the records of this office:

Lot No.	Block No.	Area	Valuation
		Acres	
1	11	2.50	$37.50
2	11	2.50	37.50
2	15	2.77	41.55
3	15	2.77	41.55
1	28	2.50	37.50
4	28	2.50	37.50
1	29	2.50	50.00
4	29	2.50	50.00

Before any lot of the class indicated may be disposed of at private sale, it must be offered at public sale.

You will cause all lots in the town site of Chesterfield, of the class indicated, to be offered at public sale, for cash, at your office at not less than the appraised values on Thursday, July 8, 1926, the sale otherwise to be in accordance with the regulations contained in Circular No. 1019. You will report promptly at the close of the sale whether or not the lots are sold and whether or not the sale has been closed. At the close of the sale the lots, if unsold, will become subject to private entry for cash at the appraised values.

Very respectfully,

William Spry, *Commissioner.*

Approved May 15, 1926.

E. C. Finney,
First Assistant Secretary.

Circular No. 1086

REGULATIONS FOR THE SALE OF TOWN LOTS IN THE FIRST ADDITION TO THE TOWN SITE OF FORD, CALIF.

Department of the Interior,
General Land Office,
Washington, July 26, 1926.

Register, *Visalia, Calif.*

Sir: By Executive order No. 4225 of May 16, 1925, the S. ½ NW. ¼ and S. ½ NW. ¼ NW. ¼, sec. 12, T. 32 S., R. 23 E., M. D. M., were eliminated from Naval Petroleum Reserve No. 2 and reserved for town-site purposes under section 2380, United States Revised Statutes. By the terms of the order all oil and gas deposits therein are retained in said reserve for the use and benefit of the Navy.

The subdivisional survey thereof was made under section 2381, Revised Statutes, and accepted May 15, 1926. The unreserved lots in said town site will be disposed of under the provisions of section 2381, Revised statutes, in accordance with regulations herein prescribed and subject to the conditions and limitations of the act of July 17, 1914 (38 Stat. 509).

Four drilling sites of approximately 2 acres each on each 40-acre tract within the town site have been reserved from disposition under the town-site laws for the future development of the oil and gas deposits. Such sites have been marked upon the approved plat and will be reserved from the sale.

Date of sale.—On Monday, November 8, 1926, beginning at 10 o'clock a. m., a sale at public auction to the highest bidder will be held at the town site, of all unreserved lots, the sale to be conducted from day to day until all such lots shall be offered under the supervision of the Commissioner of the General Land Office or his representative. No lots will be sold for less than the appraised price and on the terms herein stated. After all unreserved lots have been offered, the sale will not be closed, but it will be indefinitely postponed, pending a reappraisement of the remaining lots before being made subject to private sale.

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when and where the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—No lot will be disposed of for less than its appraised value; one-fourth of the bid price shall be paid on the day the bid is accepted and the balance of the purchase price may be paid in three equal installments in one, two, and three years after the date of sale, without interest. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment there will be issued to the purchaser a nontransferable memorandum duplicate certificate as per Form 4–014; the register in such case will issue an official receipt (Form 4–131) for the money paid. Nothing herein will prevent the transfer of interest secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased fails to make any succeeding payment, required under these regulations, at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot after forfeiture is declared will be subject to disposition. Lots remaining unsold at the close of the sale, or thereafter declared forfeited for nonpayment of any sum of the purchase price, under the terms of the sale, will not be subject to private entry for cash until they are reappraised.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States.

Owners of buildings who do not purchase the lots on which said buildings are located will be allowed 60 days from the date of sale in which to remove their improvements.

The newspapers in the vicinity should be given copies of a notice of the sale as an item of news and such other publicity should be given it as can be done without expense.

The commissioner, or his representative conducting the sale, is authorized to reject any and all bids for any lot, and at any time suspend, adjourn, or postpone the sale of any lot or lots to such time and place as he may deem proper and to reappraise any lot or lots.

Very respectfully,

William Spry, *Commissioner.*

Approved July 26, 1926.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

REGULATIONS FOR THE SALE OF TOWN LOTS IN THE TOWN SITE OF HARDING, FLA.

Department of the Interior,
Washington, D. C., October 30, 1923.

The Commissioner of the General Land Office.

Sir: By virtue of Executive Ordor No. 3480, dated June 10, 1921, under the provisions of sections 2380 and 2381, United States Revised Statutes, you are directed to cause the unreserved lots in the town site of Harding, Fla., to be offered for sale at said town site at public outcry to the highest bidder, at not less than their appraised value, respectively, in the manner and on the terms hereinafter described and under the supervision of the Commissioner of the General Land Office, beginning on Tuesday, February 12, 1924, at 10 o'clock a. m. and continuing thereafter from day to day as long as may be necessary, Sundays and holidays excepted.

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when and where the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—No lot will be disposed of for less than its appraised value; one-fourth of the bid price shall be paid on the day the bid is accepted and the balance of the purchase price may be paid in three equal installments in one, two, and three years after the date of sale.

No entry will be allowed until payment has been made in full for the lot, but in case of partial payment there will be issued to the purchaser a nontransferable memorandum duplicate certificate as per Form 4–014; the receiver in such case will issue an official receipt (Form 4–131) for the money paid. Nothing herein will prevent the transfer of interest secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased fails to make any succeeding payment, required under these regulations, at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot after forfeiture is declared will be subject to disposition. Lots remaining unsold at the close of the sale, or thereafter declared forfeited for nonpayment of any sum of the purchase price, under the terms of the sale will be subject to private entry for cash at their appraised value.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever before or at the time of the public sale of any of the lands of the United States shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale shall be fined not more than one thousand dollars or imprisoned not more than two years, or both.

The commissioner, or his representative conducting the sale, is authorized to reject any and all bids for any lot, and at any time suspend, enjoin, or postpone the sale of any lot or lots to such time and place as he may deem proper.

Very truly yours,

E. C. FINNEY,
First Assistant Secretary.

(List of appraisements omitted.)

AMENDMENT OF REGULATIONS RELATING TO HARDING TOWN SITE, FLA.

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1924.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

MY DEAR MR. COMMISSIONER: I have your letter of February 1, 1924, recommending certain amendments to the regulations issued October 30, 1923, relating to the sale of town lots in the town site of Harding, Fla., and after careful consideration the regulations are hereby amended as follows:

Under the title "Forfeiture" the second sentence will read:

> Lots remaining unsold at the close of the sale will be subject to private entry for cash at their reappraised value, or lots thereafter declared forfeited for nonpayment of any sum of the purchase price, under the terms of the sale, will be subject to private entry for cash at the price bid at the sale for such lots.

Further, the last paragraph of said regulations is hereby amended by adding thereto—

> and to reappraise any lot or lots remaining unsold at the close of sale.

Very truly yours,

E. C. FINNEY,
First Assistant Secretary.

PAYMENTS FOR LOTS IN HARDING TOWN SITE

Department of the Interior,
General Land Office,
Washington, August 21, 1929.

The Secretary of the Interior.

Sir: At the sale of lots in Harding, Fla., held February 12, 1924, 128 lots were sold for approximately $386,000, of which amount about three-fourths has been paid.

One Lewis G. Norton was living on the land and asserting claim thereto and suit was instituted to eject him from the land.

This department was not advised until July 11, 1929, of the final judgment entered in favor of the Government in said suit. Because of the long delay, the Secretary directed that the payment of installments due on lots would be deferred until further notice and that 90 days' notice would be given when payments were required.

On July 20, 1929, the register at Gainesville was directed to notify purchasers that they would be required to pay the balance due within 90 days from receipt of notice.

Two applications have been received for an additional extension of time in which to meet such payments. It is probable that there will be many such applications.

One of the applicants states that she was not expecting to be called on to pay until near the next anniversary of the sale, which will be in February, 1930. She states that she will be able to pay by January 1, 1930, and asks an extension of time until then. The other applicant asks until the anniversary of the sale, February 12, 1930.

In view of the unusual delay in granting patents, caused by the pending suit, and the inconvenience and hardship caused many purchasers, it is recommended that an extension of time be granted until February 15, 1930, to all purchasers who ask for such extension.

Very respectfully,

C. C. Moore, *Commissioner.*

Approved August 24, 1929.

John H. Edwards,
Assistant Secretary.

Circular No. 1017

REGULATIONS FOR THE SALE OF TOWN LOTS IN THE TOWN SITES OF HAYS AND LODGE POLE, IN THE FORT BELKNAP INDIAN RESERVATION, MONT.

Department of the Interior,
General Land Office,
Washington, June 16, 1925.

The Commissioner of the General Land Office.

Sir: Under the provisions of the act of March 3, 1921 (41 Stat. 1355), and R. S. 2381, you are directed to cause the unreserved lots in the town sites of Hays and Lodge Pole, Mont., to be offered for sale in the town site of Hays on Monday, August 24, 1925, and in the town site of Lodge Pole on Wednesday, August 26, 1925, at public outcry to the highest bidder at not less than their appraised value, respectively, in the manner and on the terms hereinafter described and under the supervision of the Commissioner of the General Land Office continuing from day to day as long as may be necessary.

Manner.—Bids may be made either in person or by agent but not by mail nor at any time or place other than the time and place when and where the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of sale the lot awarded to him shall be reoffered for sale on the following day.

Terms.—No lot will be disposed of for less than its appraised value. One-third of the bid price shall be paid on the date the bid is accepted and the balance of the purchase price may be paid in two equal installments in one and two years from the date of the sale. Interest at the rate of 5 per cent per annum will be charged on deferred installments from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment there will be issued to the purchaser a nontransferable memorandum duplicate certificate as per Form 4–014; the receiver in such case will issue a receipt (Form 4–131) for the money paid. Nothing herein will prevent the transfer of interest secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made.

Preference right.—The act of March 3, 1921, section 5, provides:

> That any person who, at the date when the appraisers commence their work upon the land, shall be an actual resident upon any one such lot and the owner of substantial and permanent improvements thereon, and who shall maintain his or her residence and improvements on such lot to the date of his or her application to enter, shall be entitled to enter, at any time prior to the day fixed for the public sale and at the appraised value thereof, such lot and any two additional lots of which he or she may also be in possession and upon which he or she may have substantial and permanent improvements: *And provided further*, That before making entry of any such lot or lots the applicant shall make proof, to the satisfaction of the register and receiver of the land district in which the land lies of such residence, possession, and ownership of improvements, under such regulations as to time, notice, manner, and character of proofs as may be prescribed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior: *And provided further*, That in making their appraisal of the lots so surveyed, it shall be the duty of the appraisers to ascertain the names of the residents upon and occupants of any such lots, the character and extent of the improvements thereon, and the name of the reputed owner thereof, and to report their findings in connection with their report of appraisal, which report of findings shall be taken as prima facie evidence of the facts therein set out.

The application for preference right should be presented before the date of the public sale, accompanied by proof in support thereof in the form of a corroborated affidavit, setting forth the facts as to residence, showing when it began and the length thereof, ownership and value of improvements, and any other pertinent facts.

Forfeiture.—If any person who has made partial payment on the lot purchased fails to make any succeeding payment, required under these regulations, at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot after forfeiture is declared will be subject to disposition. Lots remaining unsold at the close of the sale will be subject to private entry for cash at their reappraised value, or lots thereafter declared forfeited for nonpayment of any sum of the purchase price, under the terms of the sale will be subject to private entry, for cash at the price bid at sale for such lots.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

The commissioner, or his representative conducting the sale, is authorized to reject any and all bids for any lot and at any time suspend, enjoin, or postpone the sale of any lot or lots to such time and place as he may deem proper, and to reappraise any lot or lots remaining unsold at the close of sale.

Very truly yours,

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 1020[2]

REGULATIONS FOR THE SALE OF LOTS IN THE TOWN SITE OF MINIDOKA, IDAHO

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, July 3, 1925.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: By Executive order No. 2962 of September 16, 1918, the SW. ¼ NW. ¼ sec. 1, SE. ¼ NE. ¼ sec. 2, T. 8 S., R. 25 E., B. M., was reserved for town-site purposes to be disposed of under section 2381, R. S. The land has been divided into lots and blocks and the survey was accepted July 24, 1923. You are therefore directed to cause the unreserved lots in the town site of Minidoka, Idaho, to be offered for sale at said town site on Monday, September 14, 1925, at public outcry to the highest bidder at not less than their appraised value, respectively, in the manner and on the terms hereinafter described and under the supervision of the Commissioner of the General Land Office, continuing from day to day as long as may be necessary.

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when and where the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder.

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[2] See Circular No. 1064, p. 1549.

Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—No lot will be disposed of for less than its appraised value. One-third of the bid price shall be paid on the date the bid is accepted and the balance of the purchase price may be paid in two equal installments in one and two years from the date of the sale. Interest at the rate of 5 per cent per annum will be charged on deferred installments from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment there will be issued to the purchaser a nontransferable memorandum duplicate certificate as per Form 4–014; the register in such case will issue a receipt (Form 4–131) for the money paid. Nothing herein will prevent the transfer of interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased fails to make any succeeding payment, required under these regulations, at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot after forfeiture is declared will be subject to disposition. Lots remaining unsold at the close of the sale will be subject to private entry for cash at their reappraised value, or lots thereafter declared forfeited for nonpayment of any sum of the purchase price, under the terms of the sale, will be subject to private entry for cash at the price bid at sale for such lots.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

The commissioner, or his representative, conducting the sale is authorized to reject any and all bids for any lot and at any time suspend, adjourn, or postpone the sale of any lot or lots to such time and place as he may deem proper and to reappraise any lot or lots.

The newspapers in the vicinity of the land should be given a statement concerning the sale as an item of news, and such other publicity should be given it as can be done without expense.

Very truly yours,

E. C. Finney,
First Assistant Secretary.

Circular No. 1150

REGULATIONS FOR THE SALE OF LOTS IN THE TOWN SITE OF PARSHALL, IN THE FORMER FORT BERTHOLD INDIAN RESERVATION, N. D.

Department of the Interior,
General Land Office,
Washington, May 16, 1928.

Register, *Bismarck, N. Dak.*

Sirs: Requests have been made for the public sale of unsold lots in the town site of Parshall, in the former Fort Berthold Indian Reservation, N. Dak., and it appears that a sale should be held.

It is therefore recommended that the unsold lots in said town site be offered for sale at public outcry, at not less than the reappraised value attached hereto, and approved hereby, at the time and place, in the manner, and under the terms hereinafter prescribed, as provided in section 6 of the act of June 1, 1910 (36 Stat. 455), which section requires 20 per cent of the net proceeds of the sale to be set apart and expended under the direction of the Secretary of the Interior in the construction of schoolhouses or other public buildings or improvements in the town site.

Time and place of sale.—Beginning on June 14, 1928, and continuing thereafter from day to day, Sundays and holidays excepted, as long as may be necessary, at Parshall, N. Dak., under your supervision.

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—Payments will be required as follows:

No lot will be disposed of for less than $10, and any lot sold for $10 must be paid for on the day it is sold; the minimum of $10 and at least 25 per cent of the bid price of each lot sold for more than $10 must be paid on the date of the sale, and the remainder, if the price bid is $50 or less, within one year from the date of the sale; if the price be over $50 and less than $100, 75 per cent of the cost may be divided into two equal payments due, respectively, one and two years from the date of the sale; if the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into three equal payments, due, respectively, one, two, and three years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; and will issue a memorandum receipt for the money paid.

Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser, and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

You may reject any and all bids for any lot. At the conclusion of the offering the sale will be closed and the lots remaining unsold or thereafter declared forfeited will become subject to private sale for cash at their appraised value in your office.

Very respectfully,

William Spry, *Commissioner.*

Approved May 16, 1928.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

Circular No. 977

LOTS IN PENSACOLA, FLA.

Instructions

Department of the Interior,
General Land Office,
Washington, February 11, 1925.

Register and Receiver, Gainsville, Fla.

Gentlemen: Your attention is called to the act of Congress approved January 12, 1925 (43 Stat. 738), which provides:

> That the Secretary of the Interior be, and is hereby, authorized to determine and confirm by patent in the nature of a deed of quitclaim the titles to lots in the city of Pensacola, Florida, to those persons, firms, or corporations submitting satisfactory evidence of being in possession, and of a chain of title, legal or equitable, beginning more than twenty years prior to the passage of this act, or to those claiming by virtue of improvements and continuous adverse possession for more than twenty years prior to the passage of this act. Such claims to lots are to be based on the approved survey made in 1827 by James W. Exum, deputy United. States surveyor, or upon a supplemental plat of survey where same is found to be necessary: *Provided,* That parties having

claims to lots in the city of Pensacola, Florida, and failing to present same within three years after the passage of this act, will be held to have waived their rights so to do, and such unclaimed lots will thereafter be subject to disposition solely under the act of June 28, 1832 (Fourth Statutes at Large, page 550).

(1) An application under this act must be filed with the register at Gainesville, Fla., who will assign a serial number thereto.

(2) No special form of application is established, but the application must be under oath and must state that the applicant is in possession of the land and is shown by the county records to be the present record owner, claiming through a chain of title, legal, or equitable, beginning more than 20 years prior to January 12, 1925, or that applicant was on January 12, 1925, in possession of the land and had been in continuous adverse possession for more than 20 years prior to that date and has made during that time improvements thereon. Applicant must also state whether he desires the claim to be based upon the approved survey made in 1827 by James W. Exum, deputy United States surveyor, or if he believes a supplemental plat of survey to be necessary.

(3) If applicant is claiming as record owner, etc., he must file an abstract of title certified to by a competent abstractor showing the record of all conveyances of the land from a date prior to January 12, 1905, up to the date of the filing of the application, and the affidavits of two disinterested parties that he is in possession of the land of their own personal knowledge.

(4) If applicant claims by virtue of improvements and continuous adverse possession, etc., he must file the affidavit of two disinterested witnesses made of their own personal knowledge corroborating the statements contained in the application.

(5)[f] Notice of the filing of the application must be published for 30 consecutive days in a newspaper to be designated by the register having general circulation within the city of Pensacola, and the register shall serve notice upon each of the applicants that 90 days from receipt of notice will be allowed within which to begin the publication of the notice. The notice as published must contain the name or names of applicant or applicants, date of filing of the application, the nature of the claim and such description of the land as will render it most easily identified. In addition, the notice as published must give the last date of publication and state that any protests or objections thereto must be filed with the register at Gainesville, within 30 days from the date of the last publication. The register will notify the applicant that he will be allowed 30 days from date of the last publication within which to file proof of such publication of notice.

(6) When such proof has been made, the register will examine the same in each case and if satisfied that the provisions of the act have been complied with and in the absence of any protests or objections he will issue final certificate thereon in duplicate, according to the attached form and transmit the duplicate to the applicant and the original together with all the records in the case to this office for final action. If after considering the proof the register should be of the opinion that it does not meet the requirements of the act, the

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[f] See instructions of Oct. 19, 1929, p. 1149.

register will reject the same, giving his reasons and allowing an appeal to this office; or if protests or objections are made thereto the register will transmit the case to this office with recommendations.

(7) If after serving the notice required by paragraph 5 of these instructions, and the expiration of the time allowed, no action has been taken by the applicant, the register will transmit to this office the record in the case with evidence of such notice having been given.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved February 11, 1925.

E. C. FINNEY,
First Assistant Secretary.

INSTRUCTIONS RELATIVE TO LOTS IN TOWN SITE OF PENSACOLA, FLA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 7, 1928.

REGISTER, *Gainesville, Fla.*

SIR: I have your letter of March 23, 1928, relative to the $5 fee authorized for applications filed under the act of March 23, 1928 (45 Stat. 365), for patents in the nature of quit-claim deeds to certain lots in Pensacola, Fla.

The new act extended the act of January 12, 1925 (43 Stat. 738), until January 12, 1930, and directed the register to charge a fee of $5 for each lot described in an application for deed thereunder. You should therefore collect the fee on all applications filed since the expiration of the old act and which are to be acted on under the new act.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 7, 1928.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR NO. 1054

REGULATIONS FOR THE SALE OF LOTS IN THE TOWN SITE OF SANISH IN THE FORMER FORT BERTHOLD INDIAN RESERVATION, N. DAK.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 16, 1926.

The SECRETARY OF THE INTERIOR.

SIR: Requests have been made for the public sale of the forfeited, unreserved, and unsold lots in the town site of Sanish, in the former Fort Berthold Indian Reservation, N. Dak., and it appears that a sale should be held.

It is therefore recommended that the forfeited, unreserved, and unsold lots in said town site be offered for sale at public outcry, at not less than their appraised value at the time and place, in the manner, and under the terms hereinafter prescribed, as provided in section 6 of the act of June 1, 1910 (36 Stat. 455), which section requires 20 per cent of the net proceeds of the sale to be set apart and expended under the direction of the Secretary of the Interior in the construction of school houses or other public buildings or improvements in the town site.

Time and place of sale.—Beginning on May 5, 1926, and continuing thereafter from day to day, Sundays and holidays excepted, as long as may be necessary, at Sanish, N. Dak.

Manner.—Bids may be made either in person or by agent, but not by mail or at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show qualifiations as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—Payments will be required as follows: No lot will be disposed of for less than $10, and any lot sold for $10 must be paid for on the day it is sold; the minimum of $10 and at least 25 per cent of the bid price of each lot sold for more than $10 must be paid on the date of the sale, and the remainder, if the price bid is $50 or less, within one year from the date of the sale; if the price bid be over $50 and less than $100, 75 per cent of the cost may be divided into two equal payments due, respectively, one and two years from the date of the sale; if the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into three equal payments, due, respectively, one, two and three years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; and will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot by deed, but the assignee will acquire no greater right than that of the original purchaser, and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargain, contract, or agree, or attempt to bargain, contract,

or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

The officer who conducts the sale will be, and he is hereby, authorized to appraise any unappraised lot, or to cause any lot to be reappraised which in his judgment is not appraised at the proper amount, and he may reject any and all bids for any lot and at any time suspend, adjourn, or postpone the sale of any lot or lots, to such time and place as he may deem proper.

If some but not all of the lots are sold and if the sale is suspended, the unsold lots, and lots subsequently forfeited, will not become subject to private entry but will be held for further offering at public sale. If, however, the sale is closed, the lots remaining unsold or thereafter declared forfeited will become subject to private entry for cash at their appraised value.

Very respectfully,

William Spry, *Commissioner.*

Approved March 18, 1926.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

Circular No. 1126

REGULATIONS FOR THE SALE OF LOTS IN THE TOWN SITE OF SANISH IN THE FORMER FORT BERTHOLD INDIAN RESERVATION, N. DAK.

Department of the Interior,
General Land Office,
Washington, June 27, 1927.

Register, *Bismarck, N. Dak.*

Sir: Requests have been made for the public sale of the forfeited, unreserved, and unsold lots in the town site of Sanish, in the former Fort Berthold Indian Reservation, N. Dak., and it appears that a sale should be held.

It is therefore recommended that the forfeited, unreserved, and unsold lots in said town site be offered for sale at public outcry, at not less than their appraised value at the time and place, in the manner, and under the terms hereinafter prescribed, as provided in section 6 of the act of June 1, 1910 (36 Stat. 455), which section requires 20 per cent of the net proceeds of the sale to be set apart and expended under the direction of the Secretary of the Interior in the construction of schoolhouses or other public buildings or improvement in the town site.

A portion of the lots which you were directed to withhold from future sales by instructions of June 23, 1926 (1222477 "K" CGF), are included in the list of those to be offered for sale as they do not appear to be desired by the North Dakota State Highway Commission for a right of way for the approach to the new bridge across the Missouri River. However, lots 1, 2, 3, 4, and 5, block 38, and lots

7, 8, 9, and 10, block 39, are being withheld from sale until the county authorities have had an opportunity to indicate that they are in a position to purchase same.

Time and place of sale.—Beginning on August 6, 1927, and continuing thereafter from day to day, Sundays and holidays excepted, as long as may be necessary, at Sanish, N. Dak., under your supervision.

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—Payments will be required as follows: No lot will be disposed of for less than $10, and any lot sold for $10 must be paid for on the day it is sold; the minimum of $10 and at least 25 per cent of the bid price of each lot sold for more than $10 must be paid on the date of the sale, and the remainder, if the price bid is $50 or less, within one year from the date of the sale; if the price bid be over $50 and less than $100, 75 per cent of the cost may be divided into two equal payments due, respectively, one and two years from the date of the sale; if the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into three equal payments, due, respectively, one, two, and three years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale; and reciting the right of the purchaser to make entry upon completing the payments; and will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot by deed, but the assignee will acquire no greater right than that of the original purchaser, and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States, which reads as follows:

> Whoever, before or at the time of the public sale of any of the lands of the United States, shall bargin, contract, or agree, or attempt to bargin, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof; or whoever by intimidation, combination, or unfair management shall hinder or prevent, or attempt to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisonment not more than two years, or both.

You are hereby authorized to appraise any unappraised lot, or to cause any lot to be reappraised which in your judgment is not appraised at the proper amount, and you may reject any and all bids for any lot. At the conclusion of the offering the undisposed of and the reserved lots will be reappraised and the sale will be closed.

If some of the lots are not sold the reserved lots, the unsold lots, and lots subsequently forfeited will become subject to private sale.

Very respectfully,

William Spry, *Commissioner.*

Approved June 27, 1927.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

Circular No. 1165

REGULATIONS FOR THE SALE OF TOWN LOTS IN TABOR, MONT.

Department of the Interior,
General Land Office,
Washington, September 26, 1928.

Register, *Great Falls, Mont.*

Sir: Under the provisions of the act of June 21, 1906 (34 Stat. 354), you are directed to cause the unreserved and undisposed of lots in the town of Tabor (formerly Charlot), within the former Flathead Indian Reservation, Mont., to be offered for sale at public auction under your supervision at not less than their appraised value on Saturday, October 27, 1928, beginning at 10 o'clock a. m., at Tabor, in the manner and under the terms hereinafter prescribed:

Manner.—Bids may be made either in person or by agent, but not by mail nor at any time or place other than the time and place when the lots are offered for sale hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualifications as to age, citizenship, or otherwise. If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day.

Terms.—No lot will be sold for less than the appraised value, and any lot sold for $10 or less must be paid for in cash on the day of sale. A minimum of $10 and at least 25 per centum of the bid price of each lot sold for more than $10 must be paid on the date of the sale, and the remainder, if the price bid is $50 or less, within one year from the date of the sale; if the price bid be over $50 and less than $100, 75 per cent of the cost may be divided into two equal payments due, respectively, one and two years from the date of the sale; if the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into three equal payments, due, respectively, one, two, and three years from the date of sale. No entry will be allowed until payment has been made in full for the lot, but in case of partial payment the register will issue a nontransferable memorandum duplicate certificate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; the register in such case will issue a memorandum receipt for the money paid. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made

Forfeiture.—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition. Lots remaining unsold at the close of sale or thereafter declared forfeited for nonpayment of any part of the purchase price under the terms of the sale will be subject to private entry for cash at their appraised value.

The division inspector has recommended that provision be made for the purchase of blocks 30 to 35, inclusive, at the appraised value, in case the town should incorporate or form a legal association qualified to make such purchase. Said blocks have, therefore, been withheld from the sale in order that the town may purchase them if it so desired and becomes qualified to make the purchase.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarrass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States.

The newspapers in the vicinity of Tabor should be given copies of the notice of the sale as an item of news, and such other publicity should be given thereto as can be done without expense.

You are authorized to cause any lot to be reappraised which in your judgment is not appraised at the proper amount, and you may reject any and all bids for any lot and at any time suspend, adjourn, or postpone the sale of any lot or lots to such time and place as you may deem proper. A schedule of lots showing the appraised price is attached.

Very respectfully,

William Spry, *Commissioner.*

Approved September 26, 1928.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

Circular No. 1182

REGULATIONS COVERING THE SALE OF LOTS IN WEST YELLOWSTONE, MONT.

Department of the Interior,
General Land Office,
Washington, February 21, 1929.

Mr. W. S. Wade, Chief of Field Division, Helena, Mont.

Sir: Under authority of sections 2382 to 2386, inclusive, of the Revised Statutes of the United States, the lots within West Yellowstone townsite, Montana, were offered for sale on August 25, 1924, pursuant to regulations approved June 25, 1924, Circular No. 945,[g] which sale was not closed. At this time a preference right of purchase not to exceed two lots was accorded actual residents.

The lots undisposed of at such sale have been reappraised and reappraisal thereof approved November 14, 1928.

There appearing to be a demand for the remaining lots you are hereby authorized to cause the unreserved and undisposed of lots in said townsite, shown on the accompanying list, to be offered for sale at public auction for cash at not less than the appraised value thereof in your office and under your supervision on Thursday, August 1, 1929. Sale at West Yellowstone by W. S. Wade.

Bids may be made in person or by agent but will not be received through the mail.

The purchasers will not be required to show qualifications as to age or citizenship, or to make any showing as to the amount or character of public lands theretofore acquired under any law.

The sale will be conducted from day to day until all lots shall be offered. At the conclusion of the offering you will adjourn the sale pending further instructions from this office.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any manner hinder or embarrass the sale and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States.

The newspapers in the vicinity should be given copies of the notice of this sale as an item of news and such other publicity should be given thereto as can be done without expense to the Government.

All lots purchased at the same time by the same individual should be included in one final certificate, with one serial number, in order to prevent unnecessary multiplicity of patents.

Mimeograph copies hereof will be furnished you for distribution when available.

Very respectfully,

William Spry, *Commissioner.*

Approved February 21, 1929.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

Circular No. 1180

REGULATIONS FOR THE SALE OF LOTS IN THE SECOND ADDITION TO WOLF POINT, MONT.

Department of the Interior,
General Land Office,
Washington, December 27, 1928.

Register, *Great Falls, Mont.*

Sir: The plat of survey of the second addition to Wolf Point townsite, Mont., was accepted February 11, 1922.

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[g] Circular No. 945 which authorized sales of lots in the townsite of West Yellowstone, for cash, on Aug. 25, 1924, is not carried in this publication.

A photolithographic copy of this plat is inclosed, which you will officially file in your office.

The lots within said addition to the townsite were appraised October 24, 1928, and the appraisal approved December 6, 1928. A duplicate copy of the appraisal list is also inclosed.

Block 64 of said townsite was set aside and reserved for the Reclamation Service by departmental order of May 1, 1922. Block 75 is designated on the plat as a "public reserve."

The remaining lots and blocks within said townsite, as shown on said plat of survey and on the attached list, will be offered for sale at public auction June 1, 1929, under the terms and conditions of the act of May 30, 1908 (35 Stat. 558, 563), and section 2381, Revised Statutes, in your office and under your supervision at not less than the appraised value thereof, in the manner and under the terms hereinafter prescribed.

After all unreserved and undisposed of lots have been offered you will close the sale and report to this office the result of same.

Thereafter the unsold and unreserved lots will be subject to private sale for cash at their appraised prices.

The lots in block 8 and block 67, on which a public highway was laid out, under authority of the act of March 4, 1915 (38 Stat. 1188), which highway is not shown on said plat of survey, will be sold, subject to such right of way.

Preemption proof.—Prior to the date of public sale, and on the day these lands become subject to disposal after the filing of the plat, a preemption right of purchase at the appraised price of not exceeding five lots, of which the purchaser may be in possession and on which he or she has substantial improvements, is accorded to any person who at the date the appraisers commenced their work upon the land was an actual resident upon any one lot, to secure which he must file in your office his application therefor and therein state the date of settlement and the value and character of his improvements, and that such residence and improvement has been maintained on the lot to the date of his application to enter.

The notice of intention to make proof must be published twice consecutively in a weekly newspaper (or fourteen times if in a daily newspaper), of general circulation in the townsite prior to the date set for proof, at the applicant's expense.

In order that all bona fide preemption rights may be determined prior to the date of public sale, claimants will give notice in time to submit proof in advance of the public sale.

Proof may be made before you or before any officer duly authorized by law, and must show by record or documentary evidence, where such evidence is usually required, and where not so required by the testimony of witnesses: (1) Due publication of the register's notice; (2) claimant's age; (3) his citizenship; (4) his actual residence upon one lot and substantial improvements on the other lot or lots included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price of the lot or lots must be paid when proof is made.

Qualifications.—To qualify as a preemption claimant for lots at the appraised price settlement must be shown at the time of the commencement of the appraisal and maintained to date of proof. A claim is not necessarily forfeited by the settler transferring his interest to another subsequently to the approval of the right, but patent, if issued, will be in the name of the settler and not of the transferee.

Manner.—Bids may be made either in person or by agent, but not by mail, nor at any time or place other than the time and place when the lots are offered hereunder, and any person may purchase any number of lots for which he is the highest bidder. Bidders will not be required to show any qualification as to age, citizenship, or otherwise.

If any successful bidder fails to make the payment required on the date of the sale, the lot awarded to him shall be reoffered for sale on the following day, or if the sale has been closed, then such lot will be considered as offered and unsold.

Terms.—Payments will be required as follows: No lot will be disposed of for less than $10, and any lot sold for $10 must be paid for on the day it is sold. The minimum of $10 and at least 25 per cent of the bid price of each lot sold for more than $10 must be paid on the date of the sale, and the remainder, if the price bid is $50 or less, within one year from the date of the sale. If the price bid be over $50 and less than $100, 75 per cent of the cost may be divided into two equal payments, due, respectively, one and two years from the date of the sale. If the price bid be $100 or more, the 75 per cent remaining unpaid may be divided into three equal payments, due, respectively, one, two, and three years from the date of sale.

No entry will be allowed until payment has been made in full for the lot, but in case of partial payment you will issue a nontransferable memorandum certificate in duplicate showing the amount of the bid and the terms of the sale, and reciting the right of the purchaser to make entry upon completing the payments; in such case you will issue a receipt for the money paid, and assign a current serial number thereto. Nothing herein will prevent the transfer of the interests secured by the purchase and the partial payment of the lot, by deed, but the assignee will acquire no greater right than that of the original purchaser and the final entry and patent will issue to the original purchaser when all payments are made.

Forfeiture.—If any person who has made partial payment on the lot purchased by him fails to make any succeeding payment required under these regulations at the date such payment becomes due, the money deposited by such person for such lot will be forfeited and the lot, after forfeiture is declared, will be subject to disposition.

All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously or which will in any way hinder or embarass the sale, and all persons so offending will be prosecuted under section 59 of the Criminal Code of the United States.

On the filing of the plat of survey and on receipt of these regulations you will forward a copy hereof to the postmaster at Wolf Point and conspicuously post a copy hereof in your office and a notice to the effect that the official plat of such town site has been filed in your office and that you are ready to receive applications by the occupants of lots to make proof for and purchase the lots occupied by them.

You will also forward such notice to the persons shown on the appraisement schedule attached to be occupying or claiming lots in the town site.

The newspapers in the vicinity should be given notice of this sale as an item of news and such other publicity should be given it as can be done without expense to the Government.

All lots purchased at the same time by the same person for cash should be included in one certificate with one serial number in order to prevent unnecessary multiplicity of patents.

Lots sold at private sale after this sale is closed should be accompanied by an application therefor. Certificate should issue upon payment of the purchase price.

Mimeographed copies hereof will be forwarded you for distribution when available.

Very respectfully,

William Spry, *Commissioner.*

Approved December 27, 1928.

E. C. Finney,
First Assistant Secretary.

(List of appraisements omitted.)

TRESPASS

[Reported, 49 L. D. 484]

CIRCULAR NO. 881.[1]

INSTRUCTIONS AS TO MEASURE OF DAMAGES IN TRESPASS CASES UNDER THE SUPREME COURT DECISION IN MASON ET AL. *v.* UNITED STATES

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 14, 1923.

Chiefs of Field Divisions.

SIRS: I inclose herewith for your information a photographic copy of the decision of the Supreme Court of the United States in Sam W. Mason et al. *v.* United States, decided January 2, 1923.

You will observe that the court holds that the measure of damages for the oil trespass involved is within the controlling scope of State legislation, and that the court stated:

> Here, while the suit is one in equity, the statute and decisions relied upon have nothing to do with the general principles of equity or with the Federal equity jurisdiction, but simply establish a measure of damages applicable alike to actions at law and suits in equity.

Hereafter the rule of damages to be applied in cases of timber, coal, oil, and other trespass will, in accordance with said decision, be the measure of damages prescribed by the laws of the State in which the trespass is committed.

In view of the foregoing you will, both as to your pending trespass cases and cases that may arise in the future, ascertain the laws of the State in which the trespass was committed as to measure of damages, and make your demands for settlement and your recommendations to this office in accordance therewith, citing in your reports to this office the book and page of the State statutes and the decisions on which your recommendations are based.

If a trespass is committed in a State where there is no State law governing such trespass, the measure of damages will be as follows:

TIMBER

1. Where the trespass is willful, the full value of the property at the time and place of demand, or of suit brought, with no deduction for labor and expense.

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[1] Amended by Circular No. 909, p. 1573.

2.[2] In case of an unintentional or mistaken trespass, or an innocent vendee from such trespasser, the value at the time of conversion, less the amount which the vendor has added to its value.

3. In case of a purchase without notice of wrong from a willful trespasser, the value at the time of purchase. Woodenware Co. *v.* United States (106 U. S. 432).

TURPENTINE

1. Innocent trespass: Value of the gum and injury done to the trees. United States *v.* Taylor (35 Fed. 484).

2. Willful trespass: Value of the product manufactured from the crude turpentine by the settler, or any person into whose possession same may have passed, without credit for labor bestowed on the turpentine by the wrongdoer. Union Naval Stores Co. *v.* United States (240 U. S. 284).

COAL

1. Innocent trespass: Value of the coal in place, before severance. United States *v.* Homestake Mining Co. (117 Fed. 481).

2. Willful trespass: Full value of the property at time of conversion, without deduction for the labor bestowed or expense incurred in removing and preparing it for market. United States *v.* Ute Coal and Coke Co. (158 Fed. 20).

ORES

Measure of damages is the same as in the case of coal. Benson Mining and Smelting Co. *v.* Alta Mining and Smelting Co. (145 U. S. 428); Durant Milling Co. *v.* Percy Consolidated Mining Co. (93 Fed. 166).

OIL

1. Innocent trespass: Value of oil taken, less amount of expense incurred in taking the same.

2. Willful trespass: Value of the oil taken without credit or deduction for the expense incurred by the wrongdoers in getting it. Mason *v.* United States (173 Fed. 135).

The cases now pending in this office for action will be adjudicated in accordance with the above instructions.

Respectfully,

William Spry, *Commissioner.*

Approved March 14, 1923.

E. C. Finney,
First Assistant Secretary.

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[2] See amendment, p. 1573.

[Reported, 50 L. D. 223]

CIRCULAR No. 909

MEASURE OF DAMAGE IN TRESPASS CASES—AMENDMENT OF CIRCULAR 881

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, December 29, 1923.

Chiefs of Field Divisions.

SIRS: Circular No. 881 of March 14, 1923, is hereby amended by substituting for the second rule announced under the subheading "Timber," the following:

2. In case of innocent trespasses neither the trespassers nor their transferees shall be required to pay more than the stumpage value, or the value of the timber in standing trees taken by them, as damages to the Government.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved December 29, 1923.

E. C. FINNEY,
First Assistant Secretary.

CIRCULAR No. 1090 [3]

DEFINING TRESPASS ON COAL LAND OF THE UNITED STATES AND PROVIDING PENALTY THEREFOR

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 23, 1926.

Division Inspectors, Department of the Interior.

GENTLEMEN: On July 3, 1926, there was approved an act of Congress (44 Stat. 891), which provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful to mine and remove coal of any character, whether anthracite, bituminous, or lignite, from beds or deposits in lands of the United States, or in deposits or beds reserved to the United States, with the intent wrongfully to appropriate, sell or dispose of the same, and every person who shall violate any of the provisions of this act, shall be deemed guilty of misdemeanor and fined not more than $1,000 or imprisoned not more than one year, or both.
>
> SEC. 2. Nothing in this act, however, shall interfere with any right or privilege conferred by existing laws of the United States.

You will give as much publicity to this act as possible without expense to the Government.

No special instructions under the act are deemed necessary as reports on trespass of the character defined in the act may be submitted in the same manner as other coal trespass reports, and your duties are the same as in other trespasses defined in the "Manual of Instructions," [4] page 45, et seq.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

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[3] See Circulars Nos. 953, p. 384, and 1135, p. 386.

[4] Manual of Instructions to Special Agents of the General Land Office, 1905, is issued as a separate publication.

2.[3] In case of an unintentional or mistaken trespass, or an innocent vendee from such trespasser, [illegible] time of conversion, less the amount which the [illegible] has added to its value.

3. In case of a purchaser [illegible] trespasser, the value at the time of purchase. Woodenware Co. v. United States [illegible]

[illegible]

1. Innocent trespass: [illegible]

2. Wilful trespass: Value of the product [illegible] crude turpentine by the raider, or any person into whose possession [illegible] States (240 U. S. 251).

[illegible]

1. Innocent trespass: Value of the coal in place, before severance. [illegible] Mining Co. (137 Fed. 481).

2. Wilful trespass: Full value of the property at time of conversion, without deduction for the labor bestowed or expense incurred in removing and preparing it for market. United States v. Ute Coal and Coke Co. (158 Fed. 20).

Measure [illegible] the case of coal. Benson Mining [illegible] Alta Mining and Smelting Co. (145 U. S. 428); Durant Mining Co. v. Percy Consolidated Mining Co. (93 Fed. 166).

1. Innocent trespass: Value of [illegible]

[illegible]

UNLAWFUL INCLOSURES OR OCCUPANCY

[Reported, 36 L. D. 142]

INSTRUCTIONS TO SPECIAL AGENTS UNDER THE ACT OF FEBRUARY 25, 1885 (23 STATS. 321), ENTITLED "AN ACT TO PREVENT UNLAWFUL OCCUPANCY OF THE PUBLIC LANDS"

Department of the Interior,
General Land Office,
Washington, D. C., January 18, 1907.

Registers and Receivers and Special Agents of the General Land Office:

The following instructions are issued under the act of February 25, 1885 (23 Stats. 321), entitled "An act to prevent unlawful occupancy of the public lands," a copy of which is hereto attached.

These instructions will supersede any instructions in conflict therewith, and must be faithfully followed in all matters to which they relate. These instructions must be given the widest publicity and must be faithfully and rigidly enforced. Any unlawful inclosure or obstruction existing after April 1, 1907, must be summarily destroyed in the manner provided for by the act.

1. The law declares any inclosure of public lands made or maintained by any party, association, or corporation who "had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such inclosure was or shall be made" to be unlawful and prohibits the maintenance or erection thereof.

2. It provides that it shall be the duty of the district attorney of the United States for the proper district on affidavit filed with him by any citizen of the United States that such unlawful inclosure is being made or maintained, showing the description of the lands inclosed with reasonable certainty so that the inclosure may be identified, to institute a civil suit in the proper United States district or circuit court or territorial district court in the name of the United States and against the parties named or described who shall be in charge of or controlling the inclosure complained of.

3. The execution of this law devolves primarily upon the officers of the Department of Justice, but as it is the purpose to free the public lands from unlawful inclosures and obstructions and to open the same to bona fide settlement, it is deemed incumbent upon the officers of the land department to furnish the officers of the Department of Justice with the evidence necessary to a successful prosecution of the law.

4. All charges or complaints against unlawful inclosures or obstructions upon the public lands must be carefully considered and

investigated. The name and addresses of the party or parties making or maintaining such inclosure or obstruction should be obtained by the special agent, who will keep a record thereof.

5. It shall be the duty of the special agent on receipt of any charge or complaint or upon information being acquired by him from any source that an unlawful inclosure is being maintained by any person or persons, association, or corporation, to at once proceed to secure sufficient data, including a description of the lands inclosed, with reasonable certainty not necessarily by metes and bounds nor by governmental subdivisions of surveyed land, but only so that the inclosure may be identified and the person or persons guilty of the violation, as nearly as may be, and by description if the name can not on reasonable inquiry be ascertained, and to at once submit such case with the data thus obtained to the United States attorney for prosecution.

6. It shall be the duty of the special agent to be alert and vigilant to detect the existence of unlawful inclosures in his district, and to proceed in accordance therewith as hereinabove directed, and that he is not to construe his duties as requiring that before proceeding in the matter of an unlawful inclosure there must first be filed with him a formal complaint by some person or persons acquainted with the facts, but it shall be his duty, as hereinabove stated, to take the initiative himself.

7. If an inclosure is upon surveyed land a reference to the section, township, and range should be made; if upon unsurveyed land it may be described in any manner that will disclose with reasonable certainty the location thereof. A survey of the land is not necessary to sustain proceedings under the law, but cases may arise in which a survey may be desirable, in which event application therefor must be first submitted to this office.

8. If after investigation it is found that an unlawful inclosure is being maintained the special agent will make report in duplicate on Form 4–495, one of which will be forwarded to this office and the other to the United States attorney for the district in which the land is situated, accompanied by the requisite affidavit.

9. The special agent must make the affidavit required by law if no other person can be found to make the same, and a copy thereof must be submitted with the report to this office. The affidavit must state all material facts relating to the unlawful inclosure.

10. If after investigation no unlawful inclosure is found to exist, a statement to that effect to this office, giving the names and addresses of the parties charged therewith and the description of the land alleged to be unlawfully inclosed, will be sufficient.

11. In any report submitted to this office it must be shown whether there are any fraudulent entries upon the lands alleged to be unlawfully inclosed; and if so, they must be reported to this office upon the provided Form 4–480.

12. The question, what constitutes a claim or color of title, is one especially for the courts to determine, but special agents are expected to report every case coming to their attention in which the claim or color of title included in such inclosure is not clearly established and defended.

13. The law provides that no person by force, threats, intimidation, or by any fencing or inclosing or any other unlawful means shall prevent or obstruct or shall combine or confederate with others to prevent or obstruct any person from peaceably entering upon or establishing a settlement or residence upon any tract of public land subject to settlement or entry under the public land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands.

14. Any fence or other obstruction upon any portion of public land, whether entirely inclosing public land or only partially so, must be reported to this office upon the form herein provided for.

15. Special agents will consult with the United States attorneys with regard to any case in which the question of the legality of the inclosure is raised.

16. When a case is submitted to the United States attorney for prosecution, the special agent will take no further action therein except by direction of this office or at the request of the United States attorney.

17. The special agent must keep the office advised of all proceedings in court in relation to any cases involving unlawful inclosures, and is required to render the United States attorney all possible assistance therein.

18. No statement or showing by the parties in interest will obviate the necessity for a final and personal investigation by the special agent to ascertain whether the unlawful inclosure has been wholly removed, and the result of such investigation must be reported to this office.

Very respectfully,

W. A. Richards, *Commissioner.*

Approved January 18, 1907.

E. A. Hitchcock, *Secretary.*

(Act omitted.)

[illegible] sufficient data, including a description [illegible]

[illegible] case with the data thus obtained to the United States [illegible]

[illegible] proceed in accordance therewith as hereinabove directed, and [illegible]

[illegible] facts, but it shall be his duty, as hereinabove stated [illegible]

[illegible] tainty the location thereof. A survey of the land is not nece[illegible] sustain proceedings under the law, but cases [illegible] such a survey [illegible] event application therefor must be first submitted to this office.

8. If after investigation it is found that an unlawful inclosure is being maintained the special agent will make report in duplicate on Form 4-[illegible], one of which will be forwarded to this office and the other to the United States attorney for the district in which the land is situated, accompanied by the requisite affidavit.

9. The special agent must make the affidavit required by law if no other person can be found to make the same, and a copy thereof must be submitted with the report to this office. The affidavit must state all material facts relating to the unlawful inclosure.

10. If after investigation no unlawful inclosure is found to exist, a statement to that effect to this office, giving the names and addresses of the parties charged therewith and the description of the land alleged to be unlawfully inclosed, will be sufficient.

11. In any report submitted to this office it must be shown whether there are any fraudulent entries upon the lands alleged to be unlawfully inclosed; and if so, they must be reported to this office upon the prescribed Form 4-[illegible].

12. The question, what constitutes a claim or color of title, is one ordinarily for the courts to determine, but special agents are expected to report every case coming to their attention in which the claim or color of title included in such inclosure is not clearly established and defended.

UTAH LANDS

CIRCULAR NO. 1163

RELIEF OF OCCUPANTS AND CLAIMANTS OF CERTAIN LANDS IN UTAH

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 8, 1928.

REGISTER, UNITED STATES LAND OFFICE,
Salt Lake City, Utah.

SIR: The act of Congress approved April 15, 1920 (41 Stat. 553), entitled "An act for the relief of occupants and claimants of unsurveyed public land in township eight north of range two west of Salt Lake meridian, Utah," provides:

> That on the survey of any areas of public land in sections ten, fifteen, twenty-two, and twenty-seven, in township eight north, range two west of the Salt Lake base and meridian, in the State of Utah, which may be found to have been erroneously omitted from the official survey, plat of which is now on file in the General Land Office, the Commissioner of the General Land Office be, and he is hereby, authorized to cause such areas to be surveyed and platted in such a manner as will segregate the several holdings of the bona fide occupants of such areas as shown by their occupation and improvements.
>
> SEC. 2. That under such rules and regulations as the Secretary of the Interior shall prescribe all such bona fide occupants as shall have had adverse possession by themselves or their grantors for seven years prior to the approval of the plat of survey provided for herein shall have a preferred right at any time within six months after the approval of such plat of survey to purchase at the rate of $2.50 per acre the lands so occupied and improved in such parcels as the same are so held and possessed by each of them, not to exceed in any one case one hundred and sixty acres.
>
> SEC. 3. That in lieu of any portion of such areas which may be found to lie within the limits of a grant to any railroad company and to have been for the period of seven years mentioned in the preceding section in the possession of a bona fide occupant or occupants claiming otherwise than through such company, such railroad company shall be entitled to select other lands in accordance with the terms and restrictions of the act of Congress approved June 22, 1874: *Provided*, That the land described in one certain patent of the United States, dated September 16, 1884, to the Central Pacific Railroad Company as lot five of the northwest quarter of section fifteen of the township and range aforesaid, containing thirty-three and nineteen one-hundredths acres, shall not form the basis for any such lieu selection; but the survey hereinbefore provided for shall be so made as to identify said tract; and title to said tract is hereby confirmed in said railway company and its grantees.

Attention is invited to that portion of the act in which it is stated:

> All such bona fide occupants as shall have had adverse possession by themselves or their grantors for seven years prior to the approval of the plat of survey provided for herein shall have a preferred right at any time within six months after the approval of such plat of survey to purchase at the rate of $2.50 per acre the land so occupied and improved.

Said lands are not subject to disposal until the plats of survey thereof shall have been officially filed in the district land office. It is evident that it was the intent of Congress to grant bona fide occupants a period of six months from the date of the filing of the plat of survey within which to assert their preference right to purchase the lands, rather than from the date of the approval of the plat.

The following regulations are for the guidance of your office and the public in regard to the above-quoted act.

Applications to purchase under this act must be sworn to and may be executed before any officer having a seal and authorized to administer oaths in the land district in which the lands are located and must be filed in your office within six months from the filing of the plats of survey. The applicant must show that he is bona fide occupant of the land applied for; must describe the land which he desires to purchase; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon, the extent of the cultivation, if any, and how long continued, and that he has had adverse possession by himself or his grantors for seven years prior to the approval of the plat of survey. This application must be supported by affidavits of two persons having personal knowledge of the facts alleged in the application. Upon receipt of such application you will assign a current serial number thereto and promptly forward same to the Commissioner of the General Land Office.

If, upon consideration of the application in the General Land Office, it shall be determined that the applicant is entitled to purchase the lands applied for, you will be authorized to notify the applicant at once, by registered mail, that he must, within 30 days from service of notice, deposit with you the purchase price, or thereafter and without further notice forfeit all rights under his application.

Upon payment of the purchase price of the land except as to lands covered by the last paragraph of these regulations, you will issue notice of publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation designated by you in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the affidavit of the publisher to be filed in the district office. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. You will cause a notice similar to the notice for publication to be posted in the district land office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in the district land office prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.

Upon submission of satisfactory proof, you will, if no protest or contest is pending, allow a final entry and issue final certificate, transmitting same to the General Land Office with your regular monthly returns.

Should any application be filed for lands in the odd sections which are within the limits of the grant made to the Central Pacific Railroad Co. by persons claiming under the act mentioned, you will forward same to this office without requiring publication but making your recommendations. This office will then consider the application in connection with the right of the railroad company to make a selection in lieu of the land applied for by the occupant. Publication will thereafter be required if the application is found to be allowable.

Thos. C. Havell,
Acting Commissioner.

Approved September 8, 1928.

E. C. Finney,
First Assistant Secretary.

[illegible] thereof shall have been officially filed in the district land office [illegible]

[illegible] ister oaths in the land district in which the lands are lo[illegible] must be fi[illegible] within six months from the filing of the plat of survey. The applicant must show that he is bona fide occupant of the land applied for; must describe the land he desires to purchase [illegible] character, and value of the improvements on the land [illegible] application; when they were placed thereon, the extent of the cultivation, if any, and how long continued, and that he has had adverse possession by himself or his grantors for seven years prior to the approval of the plat of survey. This application must be supported by affidavits of two persons having personal knowledge of the facts alleged in the application. Upon receipt of such application you will assign a current serial number thereto and promptly forward same to the Commissioner of the General Land Office.

If, upon consideration of the application in the General Land Office, it shall be determined that the applicant is entitled to purchase the lands applied for, you will be authorized to notify the applicant at once, by registered mail, that he must, within 30 days from service of notice, deposit with you the purchase price, or thereafter and without further notice forfeit all rights under his application.

Upon payment of the purchase price of the land except as to lands covered by the last paragraph of these regulations, you will issue notice of publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation designated by you in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the affidavit of the publisher to be filed in the district office. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication; otherwise the application may be allowed. Any objections or protests must be under oath, corroborated, and a copy thereof served upon the applicant. You will cause a notice similar to the notice for publication to be posted in the district land office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in the district land office prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.

Upon submission of satisfactory proof, you will, if no protest or contest is pending, allow a final entry and issue final certificate, trans-

WISCONSIN LANDS

[Reported, 51 L. D. 107]

Circular No. 994

INSTRUCTIONS UNDER THE ACT OF CONGRESS, APPROVED FEBRUARY 27, 1925

Department of the Interior,
General Land Office,
Washington, April 7, 1925.

Register and Receiver,
Wausau, Wis.

Gentlemen: The act of February 27, 1925 (43 Stat. 1013), entitled "An act granting to certain claimants the preference right to purchase unappropriated public lands" provides:

That the Secretary of the Interior, in his judgment and discretion, is hereby authorided to sell, in the manner hereinafter provided, any of those lands situated in the State of Wisconsin which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws.

Sec. 2. " That any owner in good faith of land shown by the official public land surveys to be bounded in whole or in part by such erroneously meandered area, and who acquired title to such land prior to this enactment, or any citizen of the United States who in good faith under color of title or claiming as a riparian owner has, prior to this act, placed valuable improvements upon or reduced to cultivation any of the lands subject to the operation of this act, shall have a preferred right to file in the office of the register and receiver of the United States land office of the district in which the lands are situated, an application to purchase the lands thus improved by them at any time within 90 days from the date of the passage of this act if the lands have been surveyed and plats filed in the United States land office; otherwise within 90 days from the filing of such plats. Every such application must be accompanied with satisfactory proof that the applicant is entitled to such preference right and that the lands which he applies to purchase are not in the legal possession of an adverse claimant under the public land laws.

Sec. 3. In event such eroneously meandered land is bounded by two or more tracts of land held in private ownership with apparent riparian rights indicated by the official township plat of survey at date of disposal of title by the United States, the Commissioner of the General Land Office shall have discretionary power to cause such meandered area, when surveyed, to be divided into such tracts or lots as will permit a fair division of such meandered area among the owners of such surrounding or adjacent tracts under the provisions of this act. In administering the provisions of this act, where there shall exist a conflict of claims falling within its operation, if any claimant shall have placed valuable improvements upon the land involved, or shall have reduced the same to cultivation, then to the extent of such improvements or cultivation, such claimant shall be given preference in adjustment of such conflict: *Provided,* That no preference right of entry under this act shall be recognized for a greater area than one hundred and sixty acres, in one body, to any one applicant, whether an individual, an association, or a corporation: *Provided further,* That this act shall not be construed as in any manner abridging the existing rights of any settler or entryman under the public land laws.

SEC. 4. That upon the filing of an application to purchase any lands subject to the operation of this act, together with the required proof, the Secretary of the Interior shall cause the lands described in said application to be appraised, said appraisal to be on the basis of the value of such lands at the date of appraisal, exclusive of any increased value resulting from the development or improvement thereof for agricultural purposes by the applicant or his predecessor in interest, but inclusive of the stumpage value of any timber cut or removed by the applicant or his predecessor in interest.

SEC. 5. That an applicant who applies to purchase lands under the provisions of this act, in order to be entitled to receive a patent, must within thirty days from receipt of notice of appraisal by the Secretary of the Interior pay to the receiver of the United States land office of the district in which the lands are situated the appraisal price of the lands, and thereupon a patent shall issue to said applicant for such lands as the Secretary of the Interior shall determine that such applicant is entitled to purchase under this act. The proceeds derived by the Government from the sale of lands hereunder shall be covered into the United States Treasury and applied as provided by law for the disposal of the proceeds from the sale of public lands.

SEC. 6. That the Secretary of the Interior is hereby authorized to prescribe all necessary rules and regulations for administering the provisions of this act and determining conflicting claims arising hereunder.

The following regulations are for the guidance of your office until the close of the business hour on April 30, 1925, after which applications to purchase under the act in conformity with these regulations must be filed with the Commissioner of the General Land Office.

Applications to purchase under this act must be sworn to and may be executed before any officer having a seal and authorized to administer oaths in the State of Wisconsin, and must be filed with the register and receiver of your office, or with the Commissioner of this office, within ninety days from the passage of this act, if the lands have been surveyed and plats filed in your office, otherwise within ninety days from the filing of such plat. The applicant must show that he is a native-born or naturalized citizen of the United States, and if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for, if he applies as a riparian owner, or, if claiming otherwise, under what color of title his claim is based, and that the applied for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of cultivation had, if any, and how long continued. This application must be supported by the affidavits of two persons having personal knowledge of the facts alleged in the application. Upon receipt of such application a proper serial number will be assigned thereto.

If the land applied for is surveyed and vacant the local officers, after noting the application on their records, will suspend action thereon and will promptly forward same to the Commissioner of the General Land Office, whereupon same will be forwarded to the assistant chief inspector for investigation and appraisement of the land in accordance with the provisions of the act. If for unsurveyed land, the local officers will note the application and suspend same, transmitting it to this office for consideration as to whether or not the lands applied for are vacant public lands and of the class contemplated by the act under which title is sought. During such suspension the lands described in the application shall not be disposed of.

When an application is received by the assistant chief inspector, he will cause an investigation and appraisement of the land to be made in accordance with the provisions of the act. The inspector making the investigation and appraisement will make a report as to the development or improvement of the land for agricultural purposes, and as to the evidence obtained as to whether or not the lands are of a class contemplated by the act, recommending the allowance or rejection of the application, which report will be returned to this office through the assistant chief inspector.

If upon consideration of the application in this office, with report and appraisement, it shall be determined that the applicant is entitled to purchase the lands applied for, this office will notify the applicant at once, by registered mail, that he must within 30 days from service of notice deposit with the receiving clerk of this office the appraised price, or thereafter and without further notice forfeit all rights under his application.

Upon payment of the appraised price of the land this office will issue notice for publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation, designated by the commissioner of this office, in the vicinity of the lands, once a week for five consecutive weeks (or 30 consecutive days if in a daily paper[a]) immediately prior to the date of sale, but a sufficient time shall elapse between the date of last publication and date of sale to enable the affidavit of the publisher of be filed in this office. The notice will advise all persons claiming adversely to the applicant that they should file any objection or protests to the allowance of the application within the period of publication, otherwise the application may be allowed. Any objection or protest must be under oath, corroborated, and a copy thereof served upon the applicant. The commissioner of this office will cause a notice similar to the notice of publication to be posted in this office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in this office, prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.

Upon submission of satisfactory proof, if no protest or contest is pending, final certificate will issue.

Very respectfully,

William Spry, *Commissioner.*

Approved April 7, 1925.

E. C. Finney,
First Assistant Secretary.

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[a] See Instructions of Oct. 19, 1929, p. 1149.

suspension the lands described in the application shall not be disposed of.

When an application is received by the assistant chief inspector, he will cause an investigation and appraisement of the land to be made in accordance with the provisions of the act. The inspector making the investigation and appraisement will make a report as to the development or improvement of the land for agricultural purposes, and as to the evidence obtained as to whether or not the lands are of a class contemplated by the act, recommending the allowance or rejection of the application, which report will be returned to this office through the assistant chief inspector.

If upon consideration of the application in this office, with report and appraisement, it shall be determined that the applicant is entitled to purchase the lands applied for, this office will notify the applicant at once, by registered mail, that he must, within 30 days from service of notice, deposit with the receiving clerk of this office the appraised price, or thereafter and without further notice forfeit all rights under his application.

Upon payment of the appraised price of the land this office will issue notice for publication. Such notice shall be published at the expense of the applicant in a newspaper of general circulation designated by the Commissioner of this office, in the vicinity of the lands, once a week for five consecutive weeks (or 30 consecutive days if in a daily paper[1]) immediately prior to the date of sale, but a sufficient time shall elapse between the date of last publication and date of sale to enable the affidavit of the publisher to be filed in this office. The notice will advise all persons claiming adversely to the applicant that they should file any objection or protests to the allowance of the application within the period of publication, otherwise the application may be allowed. Any objection or protest must be under oath, corroborated, and a copy thereof served upon the applicant. The Commissioner of this office will cause a notice similar to the notice of publication to be posted in this office, such notice to remain posted during the entire period of publication. The publisher of the newspaper must file in this office, prior to the date fixed for the sale, evidence that publication has been had for the required period, which evidence must consist of the affidavit of the publisher, accompanied by a copy of the notice published.

Upon submission of satisfactory proof, if no protest or contest is pending, final certificate will issue.

Very respectfully,

WILLIAM SPRY, *Commissioner.*

Approved April 7, 1925.

E. C. FINNEY, *First Assistant Secretary.*

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[1] See instructions of [illegible] 1926, [illegible]

WITHDRAWALS

[Reported, 39 L. D. 544]

WITHDRAWALS—SURFACE RIGHTS—ACTS OF JUNE 22 AND 25, 1910, AND MARCH 3, 1909

DEPARTMENT OF THE INTERIOR,
Washington, March 6, 1911.[1]

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: The act of June 25, 1910 (36 Stat. 847), provides that the President may at any time in his discretion temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification, or other public purposes to be specified in the orders of withdrawal, such withdrawal to remain in force until revoked by him or by an act of Congress.

Section 2 of the act provides that lands so withdrawn shall at all times be open to exploration, discovery, occupancy, and purchase under the mining laws, excepting those relating to coal, oil, gas, and phosphates, there being a further provision, however, to the effect that the order of withdrawal shall not impair or affect the rights of any person who, prior to the date of the withdrawal, is a bona fide occupant or claimant of oil or gas bearing lands and who at such date is in diligent prosecution of work leading to the discovery of oil or gas. No hard or fast rule can be established fixing the amount of work which must have been done by the occupant prosecuting work leading to the discovery of oil or gas. Each case must rest upon its own showing of diligence when application for patent is filed.

The chief of field division should be advised of all such applications and should be prepared to submit showing, if possible, before the issuance of final certificate of entry.

This section contains further provision to the effect that there shall be excepted from the force and effect of any withdrawal all lands which are on the date of withdrawal embraced in any lawful homestead, or desert-land entry theretofore made or upon which any valid settlement has been made, and is at that time being maintained and perfected pursuant to law. Applications to make nonmineral entries by settlers claiming the benefits of the above-mentioned provisions of section 2, will be referred to the chief of the appropriate field division for investigation and report before final action is taken thereon.

Withdrawals provided for under this act include those made for the purpose of classifying coal lands, and it seems that after the passage of this act the previous coal withdrawals were renewed thereunder.

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[1] See supplementary instructions in Circular No. 183, p. 1588, and Circular No. 210, p. 1089.

The act of March 3, 1909 (35 Stat. 844), is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat. 583), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and it is not believed that the act of June 25, 1910, under consideration, was intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, supra, and as to such lands certain nonmineral entries may be allowed, as provided for by the act of June 22, 1910, supra, notwithstanding their withdrawal under act of June 25, 1910.

Mineral applications for mining claims perfected upon oil, gas, or phosphate lands prior to withdrawal, or for such claims upon lands chiefly valuable for other minerals, whether perfected before or after withdrawal, or for claims of the latter class within power-site withdrawals, and applications to submit final proof upon homestead, desert-land, and settlement claims initiated prior to a withdrawal, will be referred to the chief of field division, with the appropriate notation of the character of the withdrawal involved, in accordance with the practice under paragraphs 5 et seq. of the circular of April 24, 1907 (35 L. D. 681), for field examination and full report of all facts touching the character of the land and affecting the validity of the location, claim, or entry, as the case may be, including the possibility of water-power development, if any.

In the administration of the act hereunder, you will also be governed by the circular approved January 27, 1911, relative to cooperation between the Geological Survey and the General Land Office.

It is believed that the foregoing will enable you to properly advise the local officers in all matters necessary to put this act into operation; and where an application is received not specifically provided for herein, you will act upon the same, affording aggrieved parties the usual right of appeal.

Very respectfully,

R. A. Ballinger, *Secretary.*

[Reported, 41 L. D. 345]

Circular No. 183

MODIFICATION OF OUTSTANDING ORDERS OF WITHDRAWAL

Department of the Interior,
General Land Office,
Washington, October 21, 1912.

Registers and Receivers, United States Land Offices.

Sirs: Your attention is called to the act of Congress approved August 24, 1912 (37 Stat. L. 497), amending section 2 of the act of Congress approved June 25, 1910 (36 Stat. 847).

You will note that the provision of the said act of June 25, 1910, that all lands withdrawn under the provisions of that act shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, "so far as the same apply to minerals other than coal, oil, gas, and phosphates," is changed by the amendment, so as to provide that such lands shall, at all times, be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, "so far as the same apply to metalliferous minerals." By the approval, on August 24, 1912, of the said act, all outstanding orders of withdrawal under the act of June 25, 1910, were modified to conform to the act approved June 25, 1910, as amended by the act of August 24, 1912; and, upon the approval of said last-named act, the lands embraced in such orders of withdrawal ceased to be and are not open to exploration, discovery, occupation, or purchase under the mining laws of the United States, except for metalliferous minerals.

These instructions are in addition and supplementary to instructions of March 6, 1911 (39 L. D. 544).

You will exercise care in the enforcement of this important modification of the withdrawal orders.

Very respectfully,

FRED DENNETT, *Commissioner.*

Approved.

SAMUEL ADAMS,
First Assistant Secretary.

[Reported, 42 L. D. 318]

ADJUSTMENT TO SURVEY OF LANDS WITHDRAWN WHILE UNSURVEYED

DEPARTMENT OF THE INTERIOR,
Washington, August 12, 1913.

Hereafter, upon receipt of the returns of a survey, the Commissioner of the General Land Office shall cause the tract books in his office to be examined and if it appears that any part of the area stands withdrawn in advance of survey upon any recommendation of any bureau of this or another department, he shall ascertain whether the lands so withdrawn are capable of adjustment by reference to the legal subdivisions shown upon the plats of survey and if so, upon acceptance of the survey, he will advise the proper local land officers of such adjustment, in order that notation thereof may be made upon their records.

If there is doubt as to the lands intended to be withdrawn, the Commissioner of the General Land Office shall at once notify the appropriate bureau, through the proper channel, with a request for description according to the survey of the area which should be held withdrawn and a draft of a new order to that effect, if found necessary, shall be submitted for the approval of the Secretary of the Interior. Upon such approval, proper notation shall be made upon the tract books of the General Land Office and the local land officers shall be duly informed, in order that proper notation may be made upon their records. Any withdrawal otherwise valid shall be valid notwithstanding any failure to make the notation on the tract books, or to give to local land officers the information, or otherwise to follow the procedure required by this order.

ANDRIEUS A. JONES,
First Assistant Secretary.

[Reported, 48 L. D. 172]

INSTRUCTIONS UNDER ADMINISTRATIVE ORDER OF APRIL 23, 1921—STATE, RAILROAD, AND LIEU SELECTIONS, ETC.—WITHDRAWALS

CIRCULAR NO. 768

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, August 4, 1921.

Registers and Receivers, United States Land Offices, and Chiefs of Field Divisions.

SIRS: Attention is directed to the administrative order of April 23, 1921 (48 L. D. 96), as follows:

> The Supreme Court of the United States in Payne *v.* Central Pacific Railway Company, on February 28, 1921, decided that the railroad indemnity selection there involved should be disposed of "on its merits unaffected by the withdrawal" of the land made after perfection of the selection for a water-power site under the act of June 25, 1910 (36 Stat. 847). On March 7, 1921, in the case of Payne *v.* New Mexico the court concluded that the Land Department should dispose of the State's school-land indemnity selection "in regular course unaffected by the elimination of the base tract from the reservation" for forestry purposes after the completion of the selection. In the case of Payne *v.* United States *ex rel.* Newton, on March 14, 1921, the court referred to the departmental instructions issued April 25, 1914 (43 L. D. 294), and said:
>
> "The Secretary stated that the lapse of two years after the issue of the receiver's receipt will bar a contest or protest based upon any charge whatsoever, save where the proceeding is sustained by some special statutory provision."
>
> In Wyoming *v.* United States, decided on March 28, 1921, the court held that the conditions obtaining at the date of the completed school-land indemnity selection, with respect to the character of the land, whether known or believed to be mineral, were controlling and that the Land Department was without authority to cancel the selection on the ground that the selected land was subsequenly included in a petroleum withdrawal and proven to be mineral land.
>
> The administrative ruling of July 15, 1914 (43 L. D. 293), is not in harmony with said court decisions, and in so far as said ruling is in conflict therewith the same is hereby modified to conform to the holdings of the court. All departmental decisions based on said ruling which are not in harmony with those decisions among which are State of California et al. (44 L. D. 118), State of California et al. (44 L. D. 468), State of Utah (45 L. D. 551), and State of New Mexico (46 L. D. 217), are hereby overruled.
>
> The future adjudication of cases controlled by the decisions mentioned will be in harmony with the principles announced in those decisions.
>
> This order will not affect the disposition of the question of the mineral character of land claimed under the railroad-land grants, either within the place or the indemnity limits, or under the swamp-land grants. The well-established practice and procedure now prevailing as to such lands will continue to be followed.

In accordance with said order, chiefs of field divisions will report to this office, without investigation or further examination, and close on their books all matters involving State, railroad indemnity, lieu selections, and other like claims to land which have been completed and perfected and are now merely awaiting field examination solely for the purpose of determining whether or not the lands claimed are of value or watering places or for power or reservoir purposes.

Field investigation with respect to minerals of lands involved in State selections, lieu selections, and other like claims is to be made for the purpose of determining their character—whether nonmineral or known or believed to be mineral—at the time of the perfected selection or claim, and hearings proceedings are to be conducted for the same purpose.

Field investigations and hearings with respect to minerals will proceed as heretofore in connection with railroad and wagon-road place and indemnity lands and with lands claimed by States as swamp and overflowed in character.

If doubt is entertained as to whether any particular selection or claim to land is to be returned without field examination or hearing heretofore ordered, advice from this office should be sought in the particular case, and action taken in accordance therewith. The purpose of these instructions is to indicate procedure broadly and in general terms, rather than to formulate specific rules to be held applicable in any possible case which may arise.

The regulations governing selections by States of indemnity school lands and of lands under quantity grants for specific purposes (39 L. D. 39) require publication of notice of the selections to be made by the State and proof thereof filed in the local land office within 90 days after receipt by the State officials of the notice for publication as prepared by the register at the time of the acceptance of the selection. Such selections, regular in all respects when filed, and perfected by the timely filing of the requisite proofs, are effective from the date filed. If defective when presented, or not perfected by timely filing of proofs, they are effective only from the time the defect is cured or the required proofs are filed.

Final action on pending selections coming within the rule announced in the administrative order, supra, made for lands, which after selection were embraced within the boundaries of mineral withdrawals, and in connection with which mineral waivers or elections have been filed, in the absence of request for present action on the record, will be suspended for a period of six months from the date hereof, in order that opportunity may be afforded for the filing of formal motions for readjudication in the light of said order. Notice is given, however, that should such motion be filed, it may be necessary to have a field investigation made for the purpose of ascertaining the known character of the land as of the time of the perfection of the selection.

Respectfully,

William Spry, *Commissioner.*

Approved August 4, 1921.

E. C. Finney,
First Assistant Secretary.

[Reported, 49 L. D. 413]

WITHDRAWAL OF LAND FOR RESURVEY

INSTRUCTIONS [1]

DEPARTMENT OF THE INTERIOR,
Washington, January 19, 1923.

FINNEY, *First Assistant Secretary:*

The department has considered your [Commissioner of the General Land Office] letter ("F"–M. D. H.), of January 2, 1923, requesting instructions as to whether, in view of the decision of the Supreme Court of the United States in Cox *v.* Hart, rendered December 11, 1922, the rule announced in Hughes v. Greathead (43 L. D. 479), should still be followed.

The Supreme Court of the United States in the decision referred to held that—

> to justify the application of the term "surveyed" to a body of public land something is required beyond the completion of the field work and the consequent laying out of the boundaries, and that something is the filing of the plat and the approval of the work of the surveyor. If, pending such approval or, still more, if after disapproval of the survey, the lands in contemplation of law are unsurveyed, it is difficult to see why the same result may not follow when the survey originally approved and platted is subsequently annulled or abandoned because the lines and marks established have become obliterated.

The court held that the act of July 1, 1902 (32 Stat. 728), directing the resurvey of the land, was in effect and intent a legislative declaration that the lands therein described were, when the act was passed and for all purposes of settlement and sale, unsurveyed lands.

In Hughes *v.* Greathead, supra, Hughes claimed the right to make desert-land entry for a tract of 160 acres in a township which had been on July 22, 1911, suspended from all forms of entry or disposal, pending resurvey. Hughes alleged that his claim had been initiated on February 23, 1912. The plat of resurvey was filed March 10, 1913. The department held that the land was not unsurveyed on February 23, 1912, as it had been previously surveyed and plat filed, and that the claim of Hughes did not come within the provisions of the act of March 28, 1908 (35 Stat. 52).

In making resurveys of land, whether the surveys be "dependent" or "independent," prior valid claims are never jeopardized, and in making independent surveys all valid claims, such as "school sections" and entries or selections, are segregated and designated by numbered tracts.

The department has uniformly held that public land in a township which has been suspended for resurvey is subject to settlement under the homestead law, and in view of the holding of the court in the case cited, the department is of opinion that the rule announced in Hughes *v.* Greathead, supra, should no longer be followed.

Experience has demonstrated that good administration demands that lands in process of resurvey should be reserved not only from location, sale, and entry, but from occupation with a view to making desert-land entry under the proviso to section 1 of the act of March 28, 1908, supra. You will, therefore, when it has been determined that it is necessary to resurvey a township in a State where the desert-land law is operative, submit a draft of an Executive order withdrawing the public land in the township from all forms of appropriation except settlement under the homestead law until the plat of resurvey is filed in the local office.

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[1] Modified by instructions of May 19, 1923, p. 1593.

[Reported, 49 L. D. 597]

TEMPORARY WITHDRAWALS PENDING RESURVEYS TO PREVENT HOMESTEAD SETTLEMENTS—INSTRUCTIONS OF JANUARY 19, 1923 (49 L. D. 413) MODIFIED

Instructions

Department of the Interior,
General Land Office,
Washington, D. C., May 19, 1923.

The Commissioner of the General Land Office:

I am returning herewith a proposed Executive order submitted with your letter of May 3, 1923, providing for temporary withdrawal of certain townships under the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497).

It is stated that the townships mentioned have been examined relative to the necessity for a resurvey and that it is found that the majority of the original corners are lost and there is an overlap extending through three of the townships. Also that the original plats are utterly defective in representing areas and conditions as they really exist.

The proposed order is drawn in accordance with instructions of January 19, 1923 (49 L. D. 413), which directed that when it has been determined that it is necessary to resurvey a township in a State where the desert-land law in operative, the land should be withdrawn by Executive order from all forms of appropriation except settlement under the homestead law until the plat of resurvey has been filed in the local land office.

That order was designed to obviate the effect of the Supreme Court decision in the case of Cox *v.* Hart rendered December 11, 1922 (Sup. Ct. Rep. 154; 260 U. S. 427), which held that lands in townships suspended for resurvey have the status of unsurveyed lands and that desert-land claims may be initiated thereon under the act of March 28, 1908 (35 Stat. 52).

To allow the initiation of such claims during the process of resurvey would seriously embarrass the Land Department in the equitable adjustment of existing claims, and therefore it was deemed necessary to withdraw the land from appropriation until the resurveys were completed. An exception was made, however, in case of homestead settlement.

Further consideration of the said instructions has convinced the department that no exceptions should be made; but that in such cases the land should be withdrawn from homestead settlement as well as all other forms of appropriation. The same reasons which make it necessary to prevent the initiation of desert-land claims apply in respect to homestead settlements. Experience in adjudication of conflicts arising under resurveys has shown the evil effects of allowing settlers to further confuse the situation by making settlement in townships where the existing claimants are in controversy and doubt respecting the lines of their holdings. Such settlements become a source of embarrassment in making equitable adjustments by way of amendment of existing entries or conformation to the lines of the resurvey. No new claim should be allowed to be initiated until the lines have been definitely reestablished.

The said former instructions are modified to agree herewith and you are directed to formulate the withdrawal order accordingly.

In this connection it may be added that it is the desire of the department that lands be not withheld from appropriation longer than necessary to accomplish the object of the withdrawal, and that withdrawals for the purpose of resurvey be not made long in advance of the commencement of the contemplated resurvey.

E. C. Finney,
First Assistant Secretary.

[Reported, 52 L. D. 474]

Circular No. 1160

AMENDMENT, PARAGRAPH 15 OF CIRCULAR NO. 523 RELATING TO DRIVEWAYS FOR STOCK—WITHDRAWALS

Department of the Interior,
General Land Office,
Washington, August 10, 1928.

Registers, United States Land Offices.

Gentlemen: On August 8, 1928, the Secretary of the Interior amended paragragh 15 of the regulations contained in Circular No. 523 under the stock-raising homestead act of December 29, 1916 (39 Stat. 862), to read as follows:

DRIVEWAYS FOR STOCK

15. (*a*) Upon the receipt in the proper district land office of a duly executed application, in duplicate, for the withdrawals of public lands for a stock driveway by responsible parties in interest, the lands described therein shall be segregated from disposition temporarily, pending field investigation and report and final action thereon by the Secretary of the Interior. The register will assign a current serial number to the application, and at once forward one copy to the division inspector and the other copy to the General Land Office, accomanying each copy with a report as to the status of the affected land as shown by the records of his office.

(*b*) Pending and during such temporary segregation, applications to enter or select any affected lands may be received and suspended. If the stock driveway be not created as to the lands covered by suspended applications, the same will be allowed, if otherwise regular. If the application to make the stock-driveway withdrawal be approved, all suspended applications will be rejected.

(*c*) Lands withdrawn for driveways for stock or in connection with water holes can not thereafter be entered or filed upon, and all applications affecting lands so withdrawn will be rejected.

You will give special attention to such applications and immediately furnish the division inspector a duplicate copy thereof, and report without delay to this office, with the other copy, the status of each of the tracts involved, and carry out strictly the instructions contained in the amended regulations.

Very respectfully,

Thos. C. Havell,
Acting Commissioner.

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198	Nov. 29, 1912	41–358	1274
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203	(See footnote, p. 740.)		
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UNITED STATES DEPARTMENT OF THE INTERIOR
RAY LYMAN WILBUR, Secretary

GENERAL LAND OFFICE
C. C. Moore, Commissioner

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1931			
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21	15–30		HARDING, FLA., extension of time for payment for lots.
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22	15–88		OIL AND GAS PERMITS, abandonment of wells.
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1932			
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5			OIL AND GAS PROSPECTING PERMITS, subject to unit operation applications for.

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857	Aug. 12	14–146		MARRIED WOMEN, citizenship of. (See Circular No. 1248.)
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1267	Apr. 8	----------	----------	COLOR OF TITLE TO LANDS IN NEW MEXICO, contiguous to Spanish or Mexican grants.

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1891				
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1895				
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1897				
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1898				
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1899				
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1901				
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1905				
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1906				
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1910				
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1913				
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1917				
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1919				
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1921				
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1922				
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1923				
Mar. 3	42-1437	Fencing stock-watering reservoirs	1237	Feb. 21, 1931

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1926				
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June 3	44-690	P. 691, town sites, Tongue River Indian Reservation, Mont	1212	Apr. 3, 1930
14	44-741	Recreational sites	1085	July 16, 1931
1928				
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29	45-380	Mizpah-Pumpkin Creek grazing district, Montana	1263	Jan. 4, 1932
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21	45-439	Taxation of reclamation entries	1257	July 22, 1931
1929				
Feb. 9	45-1156	Sec. 7, p. 1157, cricket or grasshopper invasion in Colorado		Mar. 19, 1932
Mar. 2	45-1522	Government town sites on reclamation projects	1243	Mar. 27, 1931
1930				
Jan. 23	46-58	Extension of time on oil and gas prospecting permits	1209	Mar. 7, 1930
Apr. 7	46-144	Service in Indian wars	1218 302	May 6, 1930 July 22, 1930
17	46-171	Desert land entries in Chucawalla Valley	1223	May 17, 1930
May 19	46-369	Timber cutting on reconveyed lands in Oregon	1235	Jan. 23, 1931
21	46-373	Oil and gas deposits under rights of way	1224	July 3, 1930
23	46-377	Alabama coal lands	1225	July 17, 1930
23	46-378	Western Navajo Indian Reservation, Ariz	1228	July 23, 1930
June 6	46-502	Desert land entries in reclamation projects	1229	July 30, 1930
12	46-580	Pub. Res. No. 85, preference right of soldiers	302	July 22, 1930
13	46-581	Taxation of reclamation entries	1257	Do.
13	46-583	Custer National Forest, Mont., listing of lands for entry	1227	Do.
July 1	46-1954	Second entries in Wyoming	1234	Jan. 16, 1931
3	46-849	Citizenship of married women	857	Aug. 12, 1930
3	46-854	do	857	Do.
1931				
Feb. 14	46-1105	Isolated tracts, Crow reservation		Mar. 9, 1931
14	46-1107	Cheyenne River and Standing Rock lands	1240	Mar. 17, 1931
14	46-1107	Government town sites on reclamation projects	1243	Mar. 27, 1931
28	46-1454	Stock-raising homesteads in petroleum reserves	1244	Apr. 3, 1931
Mar. 3	46-1482	Saturday half holidays		May 7, 1931
3	46-1511	Amendment to naturalization laws	1248	Apr. 18, 1931
4	46-1523	Amendment to secs. 17 and 27 of mineral leasing act	1252	June 4, 1931
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1932				
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2305	302	Do.	2385	1233 1250	Dec. 16, 1930 Apr. 29, 1931
2307	302	Do.			
2309	302	Do.	2386	1233 1250	Dec. 16, 1930 Apr. 29, 1931
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2383	1233 1250	Dec. 16, 1930 Apr. 29, 1931	2455	1207	Mar. 3, 1930

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June 6	1304	1237	Feb. 21, 1931	15-31	----------
1913					
Jan. 6	1336	1260	Oct. 16, 1931	15-238	----------
Mar. 1	1340	1260	do	15-238	----------
1916					
May 18	1199	1222	June 12, 1930	14-110	----------
		1229	July 30, 1930	14-130	----------
1928					
Apr. 23	963	------	Apr. 22, 1931	15-88	----------
1929					
Mar. 16	971	1221	June 10 ,1930	14-109	----------
			Apr. 4, 1932	----------	----------
Mar. 20	972	1221	June 10, 1930	14-109	----------
			Apr. 4, 1932		
Apr. 4	973	1221	June 10, 1930	14-109	----------
			Apr. 4, 1932		
May 3	976	1221	June 10, 1930	14-109	----------
			Apr. 4, 1932		
Aug. 21	1554	------	Dec. 12, 1930	14-332	----------
			Mar. 21, 1931	15-50	----------
			May 25, 1931	15-113	----------
	L. S. B.				
1931					
Mar. 21	15-30	------	May 25, 1931	15-113	----------
May 7	15-111	------	June 16, 1931		

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Circulars modified or superseded			Amendatory or supplemental instructions			
No.	Date	C. and R. G. L. O.	No.	Date	L. S. B.	I. D.
	1912					
108	May 7	1335	1237	Feb. 21, 1931	15-31	----------
194	Nov. 16	1335	1237	do	15-31	----------
	1922					
263	May 2	589	1227	July 22, 1930	14-125	----------
	1913					
276	Oct. 30	1095	1261	Oct. 28, 1931	15-239	----------
	1929					
302	Jan. 21	792	1218	May 6, 1930	14-95	----------
			302	July 22, 1930	14-122	----------
	1914					
306	Mar. 7	1509	1211	Apr. 5, 1930	14-64	53-73
361	Nov. 4	351	1248	Apr. 18, 1931	15-78	----------
	1915					
374	Jan. 12	562	1206	Mar. 3, 1930	14-29	----------
416	June 18	1360	1237	Feb. 21, 1931	15-31	
427	July 27	569	1253	June 6, 1931	15-140	----------
	1916					
460	Feb. 26	1098	------	June 22, 1931	15-146	----------
479	June 10	1360	1237	Feb. 21, 1931	15-31	----------

TABLE OF NUMBERED CIRCULARS MODIFIED, CONSTRUED, OR SUPERSEDED—Continued

Circulars modified or superseded			Amendatory or supplemental instructions			
No.	Date	C. and R. G. L. O.	No.	Date	L. S. B.	I. D.
	1925					
523	Jan. 2	603	1244	Apr. 3, 1931	15-67	---------
	1926					
541	July 16	622	1219	May 16, 1930	14-97	---------
			1244	Apr. 3, 1931	15-67	---------
	1918					
616	Aug. 9	48	1217	May 6, 1930	14-94	---------
	1919					
636	Mar. 25	579	1219	May 16, 1930	14-97	---------
638	Apr. 8	1361	1237	Feb. 21, 1931	15-31	---------
	1928					
684	Apr. 7	742	1207	Mar. 3, 1930	14-30	53-53
	1922					
807	Feb. 9	588	1206	do.	14-29	---------
822	May 1	779	302	July 22, 1930	14-122	---------
847	Sept. 11	593	1206	Mar. 3, 1930	14-29	---------
850	Sept. 19	467	1208	Mar. 6, 1930	14-32	53-54
857	Oct. 11	352	857	Aug. 12, 1930	14-146	---------
			1248	Apr. 18, 1931	15-78	---------
	1923					
903	Aug. 29	534	Dept. 504.	May 7, 1931	15-111	---------
			Dept. 517.	June 16, 1931	---------	---------
	1924					
913	Feb. 2	600	1244	Apr. 3, 1931	15-67	---------
950	July 16	700	1213	Apr. 16, 1930	14-69	---------
953	July 19	384	1239	Mar. 6, 1931	15-35	---------
971	Dec. 20	721	1216	Apr. 14, 1930	14-80	---------
	1925					
983	Mar. 12	620	1244	Apr. 3, 1931	15-67	---------
1000	Apr. 25	701	1213	Apr. 16, 1930	14-69	---------
1003	May 18	1362	1237	Feb. 21, 1931	15-31	---------
1004	May 2	931	1251	May 7, 1931	15-112	---------
	1926					
1066	May 25	1298	------	Aug. 28, 1930	---------	---------
1076	July 8	1363	1237	Feb. 21, 1931	15-31	---------
1085	July 23	1542	1085	July 16, 1931	15-171	---------
	1927					
1120	Apr. 20	951	1242	Mar. 25, 1931	15-42	---------
1122	Apr. 27	1523	1085	July 16, 1931	15-171	---------
1135	Oct. 1	386	1239	Mar. 6, 1931	15-35	---------
	1928					
1147	May 2	965	1209	Mar. 7, 1930	14-34	53-55
1156	June 18	1062	1085	July 16, 1931	15-171	---------
1176	Nov. 27	1265	1257	July 22, 1931	15-172	---------
	1929					
1185	Mar. 22	649	------	Mar. 19, 1932	---------	---------
1197	July 1	1139	1230	July 1, 1930	14-132	---------
			1258	July 1, 1931	15-178	---------
					15-180	---------
1200	July 29	1064	1235	Jan. 23, 1931	14-353	---------
		L. S. B.				
	1930					
1220	June 9	14-108	1244	Apr. 3, 1931	15-67	---------
1221	June 10	14-109	------	Apr. 4 and 5, 1932.	---------	---------
1230	July 1	14-132	1258	July 1, 1931	15-178-180	---------
	1931					
1236	Feb. 11	15-4	1231	Jan. 27, 1932	16-15	---------
1247	Apr. 18	15-73	1254	June 6, 1931	15-144	---------

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- RESERVOIRS, rights of way for. Circular No. 1237, February 21, 1931. 15 L. S. B. 31.
- RESIDENCE AND CULTIVATION.
  - Absences by homesteaders in drought-stricken areas in 1929, 1930, 1931, and 1932. Circular No. 1265, March 26, 1932.
  - Reduction in residence requirements for climatic reasons to homestead settlers on unsurveyed lands. Circular No. 1219, May 16, 1930, 14 L. S. B. 97.
- RIGHTS OF WAY.
  - For canals, ditches, reservoirs, etc. Circular No. 1237, February 21, 1931, 15 L. S. B. 31.
  - For transportation of oil and gas. Instructions of February 21, 1931, 15 L. S. B. 3.
  - Railroad and other, leases of oil and gas deposits in and under. Circular No. 1224, July 3, 1930, 14 L. S. B. 122.
- SECOND ENTRIES, in Wyoming, in lieu of canceled entries in the Salt Creek oil field. Circular No. 1234, January 16, 1931, 14 L. S. B. 350.
- SETTLERS on unsurveyed lands, reduction to, in residence requirements for climatic reasons. Circular No. 1219, May 16, 1930. 14 L. S. B. 97.
- SOLDIERS AND SAILORS.
  - Credit allowed homestead settlers and entrymen for service in Indian wars. Circular No. 1218, May 6, 1930, 14 L. S. B. 95.
  - Homestead and preference rights. Circular No. 302, July 22, 1930, 14 L. S. B. 122.
- SOUTH DAKOTA.
  - Cheyenne River Indian lands, extension of time for payments. Circular No. 1240, March 17, 1931, 15 L. S. B. 37.
  - Custer National Forest, no further applications to be received for classification and listing of lands for entry. Circular No. 1227, July 22, 1930, 14 L. S. B. 125.
- SPRINGS.
  - Hot, etc., withdrawal of lands containing. Circular No. 1231, August 16, 1930, 14 L. S. B. 150, 15 L. S. B. 65, and January 27, 1932, 16 L. S. B. 15.
  - Missouri eliminated from requirements relating to, in Circular No. 1066. Instructions of August 28, 1930.
- STANDING ROCK INDIAN LANDS, N. DAK., extension of time for payments. Circular No. 1240, March 17, 1931, 15 L. S. B. 37.
- STOCK-RAISING HOMESTEADS.
  - Allowance of, in petroleum reserves. Circular No. 1244, April 3, 1931, 15 L. S. B. 67.
  - By Indians. Circular No. 1253, June 6, 1931, 15 L. S. B. 140.
- SURVEYS, deposits for, and certificates of deposits. Circular No. 1259, September 16, 1931, 15 L. S. B. 216.
- SWAMP, lands returned or claimed as. Procedure governing nonswamp entries and filings. Circular No. 1246, April 20, 1931, 15 L. S. B. 71.
- TAXATION of homestead and desert land entries subject to reclamation act of June 17, 1902 (32 Stat. 388), and of homestead entries in Indian irrigation projects. Circular No. 1257, July 22, 1931, 15 L. S. B. 172.
- TELEGRAPH AND TELEPHONE LINES, rights of way for. Circular No. 1237, February 21, 1931, 15 L. S. B. 31.
- TESTIMONY FEE. Circular No. 1217, May 6, 1930. 14 L. S. B. 94.
- TIMBER.
  - Cutting of, by settlers and entrymen on their unperfected claims. Circular No. 1211, April 5, 1930, 14 L. S. B. 64, 53 I. D. 73.
  - Purchased on revested and reconveyed lands in Oregon, extension of time to cut and remove. Circular No. 1235, January 23, 1931, 14 L. S. B. 353.
- TOWN SITES. (*See* name of particular town site.)

TRAM ROADS, rights of way for. Circular No. 1237, February 21, 1931, 15 L. S. B. 31.
TRESPASS, coal, measure of damage. Circular No. 1239, March 6, 1931, 15 L. S. B. 35.
TUNNELS, rights of way for. Circular No. 1237, February 21, 1931, 15 L. S. B. 31.
TULE LAKE, CALIF., sale of lots. Circular No. 1241, March 17, 1931, 15 L. S. B. 38.
UNSURVEYED LANDS, reduction in residence requirements for climatic reasons, to homestead settlers on. Circular No. 1219, May 16, 1930, 14 L. S. B. 97.
VACANT PUBLIC LANDS.
  Annual reports as to, requested from registers. Circular No. 1215, April 19, 1930, 14 L. S. B. 74; and Circular No. 1245, April 9, 1931, 15 L. S. B. 69.
  On July 1, 1930. Circular No. 1230, July 1, 1930, 14 L. S. B. 132; and Circular No. 1258, July 1, 1931, 15 L. S. B. 178, 180.
VILLA-SITE TRACTS, Flathead, sale of. Circular No. 1213, April 16, 1930, 14 L. S. B. 69.
VOUCHERS not to be increased. Circular No. 1205, February 15, 1930. 14 L. S. B. 7.
WARREN, IDAHO, sale of lots. Circular No. 1250, April 29, 1931, 15 L. S. B. 86.
WATER HOLES, Missouri eliminated from requirements of. Circular No. 1066, relating to. Instructions of August 28, 1930.
WATER PLANTS, rights of way for. Circular No. 1237, February 21, 1931, 15 L. S. B. 31.
WYOMING.
  Sale of lots in Powell, Wyo. Circular No. 1249, April 21, 1931, 15 L. S. B. 83.
  Second homesteads in, in lieu of canceled entries in the Salt Creek oil field. Circular No. 1234, January 16, 1931, 14 L. S. B. 350.
WICHITA INDIAN LANDS, OKLA., sale of. Circular No. 1216, April 14, 1930, 14 L. S. B. 80.
WITHDRAWAL.
  Of lands containing hot springs, etc. Circular No. 1231, August 16, 1930, 14 L. S. B. 150, 15 L. S. B. 65, and January 27, 1932, 16 L. S. B. 15; and Circular No. 1236, February 11, 1931, 15 L. S. B. 4.
  Oil shale. Circular No. 1220, June 9, 1930, 14 L. S. B. 108.
  To protect watersheds supplying water to Los Angeles and other cities and towns in California, recreational and grazing use of lands affected by. Circular No. 1247, April 18, 1931, 15 L. S. B. 73; and Circular No. 1254, June 6, 1931, 15 L. S. B. 144.

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